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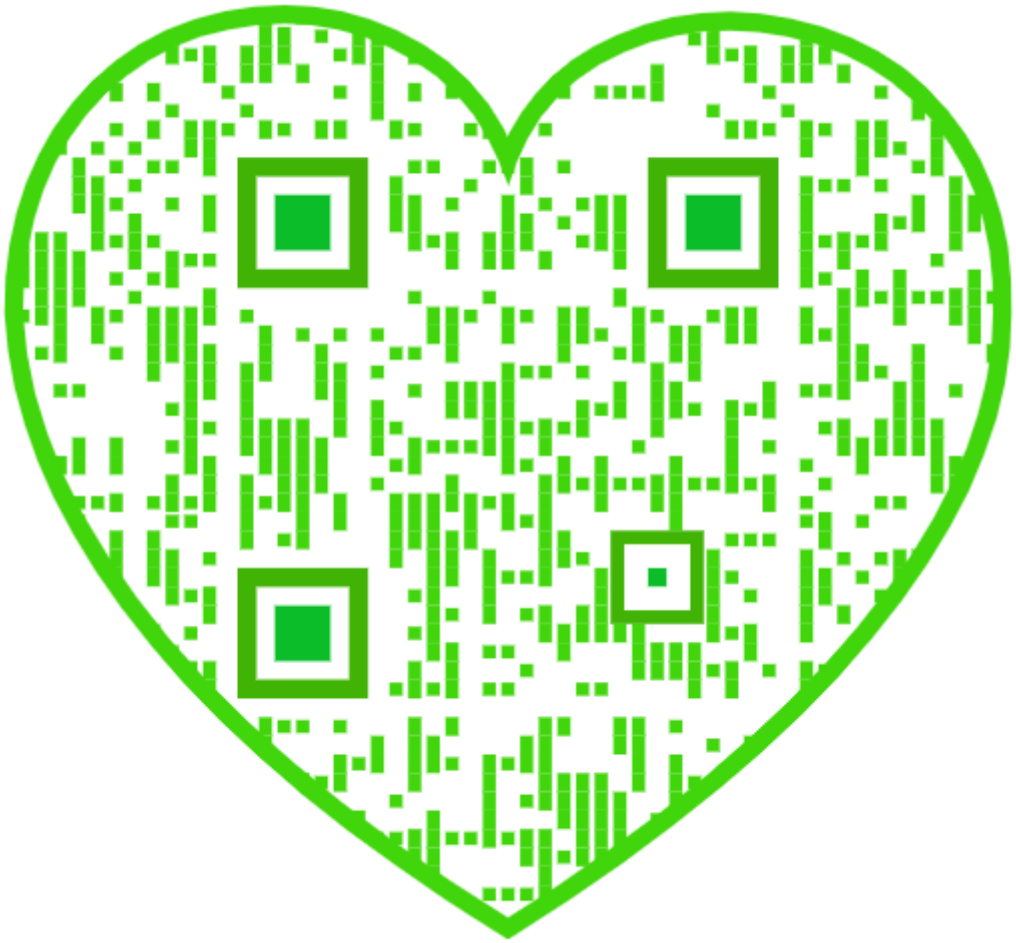

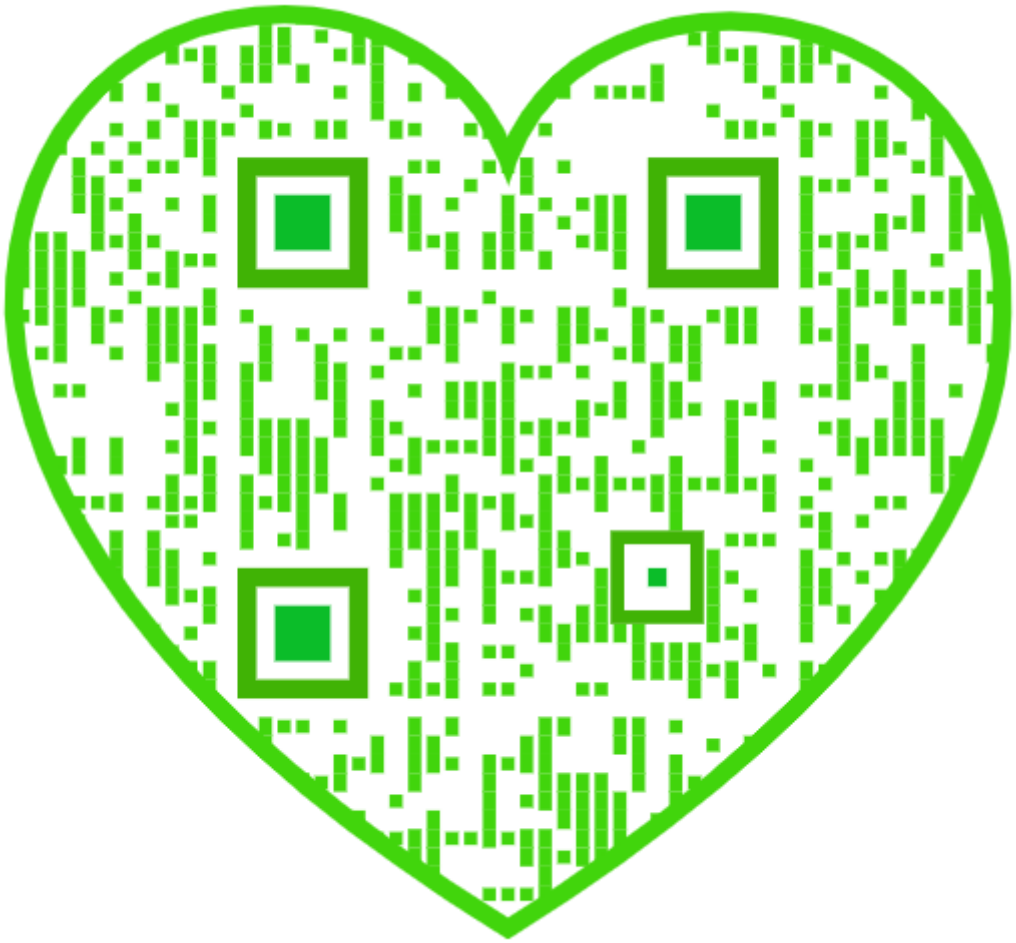

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SCHOOL CIVICS

AN OUTLINE STUDY OF THE ORIGIN AND DEVELOPMENT OF GOVERNMENT AND THE DEVELOPMENT OF POLITICAL INSTITUTIONS IN THE UNITED STATES

BY

FRANK DAVID BOYNTON

SUPERINTENDENT OF SCHOOLS, ITHACA, NEW YORK

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PREFACE

In 1901 a Syllabus of Civics for the use of grammar schools was published. The Syllabus was followed by the publication of a Library Manual of Civics. This larger book is an expansion of the Syllabus as outlined in the Library Manual. The chapters that occur in it, together with the library references and questions given at the end of each chapter, are practically the same as may be found in the Manual. For two years the Manual has been in the hands of large classes studying civics. A special edition of the present work was published in pamphlet form and used in the classroom during the school year 1903–4.

The book tells the story of our government in such a manner as to make the difficult subject of civics possible of comprehension to the average grammar or high school pupil. The story is told as it was made, historically. It begins back far enough to show clearly the relations of our government to earlier forms, and follows the various steps through which our government has passed in its evolution from a few disassociated bands of colonists to its present dignity as the world's greatest republic.

The text of the book is intended to be sufficiently full to prepare pupils for college entrance, regents' and teachers' examinations. In the larger schools where libraries are accessible it is recommended that pupils be required to look up

some of the library references on each chapter, in order that they may become acquainted with various views and thus gain a broader knowledge than any one book can give. The questions have been selected with care from all available sources and should be studied. The bibliography is merely suggestive. It might be much larger, but it will be found a reliable guide to the pupil and to schools desiring to enrich their libraries upon this subject.

The chapter on Politics and Political Parties, while somewhat of a departure in a text-book on civics, is fully warranted by the growing importance of these matters in the management of our government. Many questions arise in a civics class that should be freely debated by members of the class formed into opposing sides.

In the preparation of the book the author has received much valuable help from teachers of civics in different parts of the country, and from lawyers and statesmen to whom he has frequently applied for specific information. Special acknowledgments are due to Mr. D. C. Knowlton, A.B., for the excellent service he has rendered, and to Mrs. Gertrude Shorb-Martin, Ph.D., who has been especially efficient in composition and proof-reading.

Ithaca, N.Y., 1904.

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CIVIL GOVERNMENT

CHAPTER I

GOVERNMENT: ITS ORIGIN, ITS NECESSITY, ITS OBJECT, ITS FUNCTIONS

1. Definition. If you look into the dictionary for a definition of civics, you will find that it means "the science of civil government; the principles of government in their application to society." Further you will find that *civil* means "pertaining to the state in general." But after you have studied these definitions will you be much the wiser? *Society*, *the state*, *government*, are all themselves terms requiring explanation before the student can boast much enlightenment.

2. Origin of the State: Primitive Man already Social. First of all, then, what is society? Aristotle, the greatest of the Greek philosophers, declared that man is naturally a political animal. Whether he is so by nature or whether, as a later philosopher, Hobbes, maintained, his natural state is a state of war in which every man's hand is against his fellow, certain it is that though we follow him back through the dimmest vistas of history into prehistoric times, we find him always in association with his kind, never solitary. If he is not by nature social, certainly he had already begun to grow so even in hoariest antiquity. We find him always a member of some sort of *society*, however rude and poorly

organized, *i.e.*, we find him always associated with other persons for their mutual advantage or for the furtherance of some common purpose. It should not be understood, however, that this purpose is always definitely present to the minds of the members of the society. As a matter of fact, civil society is not a voluntary association, like a debating club for instance; on the contrary, the members are simply born into it, and have no choice as to whether or not they will be members.

3. Primitive Societies: Our Knowledge Imperfect. Doubtless in the earliest and most primitive societies this common object was to secure a more abundant supply of food. Man, in some respects the weakest and most defenceless of the larger animals, must have learned very early in the course of his evolution that by association with his fellows he could cope much more easily with the lower animals upon which he was dependent for subsistence. Just how these rude, almost wholly unorganized hunting bands developed into the complex organizations now known as states is one of the problems about which science, in the absence of a complete array of facts, is obliged as yet to theorize in part. In dealing with the question of the origin of the state we must be content if science evolves for us a consistent and reasonable theory.

4. Definition of State. But first let us guard against a possible misapprehension. Here in the United States we use the term "state" in a local and peculiar sense as applying to any one of the forty-five divisions of the nation, each of which, while regulating its own local affairs and possessing a considerable degree of political independence, is still subject to the federal constitution. The word "state" has, how-

ever, a wider application. It is used primarily to designate any community having an independent existence and possessing a permanent administrative machinery called a government. The extent of the power to be exercised through this government and the exact method of employing it are matters fixed by rules that have been established by custom or have been committed to writing. Germany, France, and the United States are examples of states.

5. Original Law-Giver Theory. Returning then to the question as to the origin of the state, we shall find a number of theories that have been more or less widely believed at different times. Men very early began to wonder how they came to have laws and governments, and we find among the traditions of all the great races stories about some remarkable law-giver, who organized their state and originated the laws under which his people were to live. Thus, for the Athenians Solon, for the Spartans Lycurgus, for the Romans Numa, played this rôle of original law-giver.

6. Divine Right Theory. A second and later theory, supposed by those who held it to be much more reasonable than the belief in an original law-giver, might be called the "divine right theory," the theory of the divine origin of the state. According to this belief, the state was formed by direct mandate of the Creator; a sort of "Let there be states, and there were states." In some way government was simply given to man from the beginning. It is this theory that lies back of the once widely cherished belief in the divine right of kings; for those who saw in the state a divine institution were very likely also to see in the particular human ruler God's vicegerent, His agent for carrying on this institution.

7. Contract Theory. More important than either of these theories, because at one time more widely believed and discussed, is what is known as the "contract" or "social compact" theory. This explains the existence of states by supposing that at some remote time men deliberately agreed together to form a single community and have a political organization. The motive that prompted them to this action was the desire to secure a better observance of the so-called "law of nature," a law supposed to exist outside of and independently of all states, of which all men had intuitive knowledge, and whose teaching can perhaps be best summed up in the golden rule.

8. Later Theories Historical. It will be noticed that none of these theories relies much for support upon known facts of history or upon observations of primitive peoples. They are only more or less plausible speculations as to how states might have come into existence. It is only in quite modern times that men have begun to piece together slowly and with much difficulty out of fragmentary bits of history and out of a great mass of observations on the customs of primitive peoples, a theory that can be called in any true sense historical.

9. Force Theory. The beginnings of modern states like France or Germany show beyond a doubt that the main influence at work in shaping certain portions of Europe into states was war. Increase of population; increase of wealth or desire therefor; improvement in weapons, tempting men to battle with their fellows for the good things that seemed attainable in no other way — these things from time to time caused the more or less organized hordes to burst their ancient boundaries and seek new homes. Thus some warrior

renowned for his prowess was hailed as leader, secured a following of the bravest of the clan or tribe to which he belonged, and when he with his chosen band got permanent control of a definite territory of considerable size, a state came into existence. Such phenomena as these, clearly traceable in the history of existing states, have sometimes been pointed to as indicating the origin of the state; but it is clear that in this "force theory" we are dealing, not with the beginnings of government, but with political bodies, possessing already a considerable degree of organization. The terms *horde*, *clan*, *tribe*, which were used in speaking of these phenomena, point to some sort of organization already existing before the element of force shaped a particular people into a France or a Germany.

10. Kinship Theory. Careful investigation along a great variety of lines has tended more and more to show that the state has its origin primarily in the bonds of kinship. The state is a gradual evolution from the family. This development of political organization out of the family has been most carefully traced in the history of what have been called the "great central nations" of the world, the Aryan peoples, including the peoples of Hindu and Iranian blood in the East, and those of Greek, Italian, Celtic, Slavonian, and Teutonic blood in the West. Now these peoples either possessed originally the patriarchal form of the family, or had already advanced to it in the remotest age to which the light of history has been able to penetrate, *i.e.*, the family was ruled over by the father, whose word was the only law known to his children and dependants, and who, from the dignity of his position and his supposed nearness to the unseen spirit world, was likewise the medium of communi-

cation with the inhabitants of that world — in other words, the priest.[1] As his family increased in number and the ties of religion and blood became more remote, it became a clan, still bound together by blood relationship, looking to a single person as its common ancestor, sharing in a common worship, and presided over by the chief kinsman instead of the father. It is in the clan, in this union of family groups, that we find the beginnings of true political organization. As the population increased several clans were formed, and these again united to form tribes. One tribe or several of them then developed into the state.

11. Summary. To sum up, then, we may say that later investigation has tended to show that in its origin the state rests not on the work of some great law-giver, not on the direct mandate of the Creator, not on a deliberate contract between individuals, not on force, *but on kinship.* Unquestionably most, if not all, of these first-named elements have aided in the development of particular states at later periods of their history, but they should not be mistaken for explanations of the origin of the state.

12. Government. What is it? In the foregoing pages we have several times used the word "government" as if its meaning were quite clear; yet how many students could formulate a good definition offhand? We are constantly feeling all about us the restraints of government. If I own

[1] It should be borne in mind, however, that the patriarchal family is not the only form of family known to history. Many evidences point to the matriarchal family, in which kinship is traced through the mother only and in which the rule belongs to her, as a probably earlier form of family organization; and the clan and the tribe, *i.e.*, the elements out of which states are built, have grown up among peoples who give no clear evidence of ever having known the patriarchal family.

property, I must repair at stated intervals to the tax collector and pay over to him for the use of the government a certain sum proportionate to the value of it; and if I persistently refuse to do this, he may sell my property and appropriate such portion as the government has asked for. Even when I have paid my taxes I am not free to do exactly as I choose with my property. I am not allowed to maintain there anything that the law considers a public nuisance, *i.e.*, anything that endangers health or comfort. I am not free to conduct my business in any way I may choose. Certain "businesses," like gambling and lotteries, are generally forbidden altogether, because the government considers them fraudulent. Certain others, like the liquor business, are permitted only on payment to the government of a heavy tax called a license, and are even then subject to rigid restrictions. Certain others, like the milk business, are subject at any moment to inspection by government officials, who are authorized to destroy my goods if they fall short of the standard fixed by government. The United States government makes and issues great quantities of money, paper and coin; yet if I should make a single piece and attempt to buy anything with it, I should be most severely punished. What, then, is this thing "government" that hedges me about on every hand, and by what right does it say to me "thou shalt" or "thou shalt not"?

13. Definitions. When we were talking about society and the state we found that primitive men, or, to speak more accurately, primitive family groups, must very early in the course of development have found it advantageous to live and work together. Men found themselves better able to survive and make progress in society than out of it. In

order, however, that survival and progress may be possible, it is necessary that society should secure to its individual members as great a degree of justice as conditions permit, and the instrument that it uses for this purpose is government. The word is used in two senses: First, government may be said to consist of customs, rules, or laws commanding what society, or to use a somewhat narrower and more definite term, what the state wishes to have done and forbidding what it does not wish to have done; second, it consists of the rulers or officers whose business it is to have these rules enforced. In other words, government is the instrument or agent which the state uses to secure the end for which it exists.

14. Anarchy Impracticable. But what need is there, it may be asked, for the restraints and commands imposed by government? Could we not get along as well without them? In almost every community there are a few persons, generally regarded by their neighbors as somewhat visionary, who have dreamed a beautiful dream that the day is at hand when the lion shall lie down with the lamb and a little child shall lead them. One hesitates to call them by the somewhat ominous name of anarchists; yet such they are, for they believe that the only good government is no government. They do not, however, advocate bomb-throwing as a means of putting an end to government; and so, to distinguish them from anarchists of the violent type, they are called theoretical anarchists. If every individual always did exactly the right thing at the right time; if he always attended strictly to his own affairs, never trespassing upon the feelings, rights, or property of others; if there were no thieves, liars, or otherwise dishonest persons; if all persons

were always pure in thought and deed, then every individual could indeed obtain his personal rights without the aid of government, and the dream of the anarchist would be realized.

15. Government Necessary. Unfortunately this condition of affairs has never yet been even approximately reached. Even the youngest of us has lived long enough to know that there are many persons unwilling to grant to others the rights and privileges they demand for themselves. The only way to secure from such persons a due consideration for the rights of others is through the exercise of some power that they at least fear and obey. So long as men are selfish, ambitious and greedy, government must remain. If each individual is to secure the largest possible personal liberty and at the same time grant to every other individual the privileges which he himself enjoys, rules or laws must be established as the standard of action for all. This, of course, does not mean that such rules once established must remain forever binding upon all who may by birth or otherwise become members of the society. Many of the rules by which our Puritan ancestors held themselves rigidly bound seem to us now only curious and amusing, as doubtless many of ours will seem to future generations. Every government that is to be in any sense permanent must provide for the possibility of orderly change. All that is meant is that, no matter how frequently subject to change, there must be, at any particular moment, established rules to which the actions of all conform.

16. Government: Its Object. What the true object of government is — the ideal it strives to attain — may be very easily gathered from the foregoing paragraphs. In the

first place, it should be borne in mind that government in the United States, as in other enlightened nations, is not intended as a restriction upon personal freedom and should not be so understood. Moreover, it rarely so acts excepting upon those who interpret personal liberty in such a way as to ignore wholly or to infringe seriously upon the rights of others, while they maintain similar rights for themselves. The object of government is to secure the individual rights and liberties of all — to give the widest possible freedom to the individual for his self-development, and yet to guard that freedom against the competition that kills, and to reduce the antagonism between self-development and social development to a minimum. In other words, the ideal toward which government strives is to secure to every individual of society the largest possible liberty compatible with the *general welfare.* If at any time it becomes obvious that the ends of government have become perverted, that it no longer strives to promote the general welfare but exists only for the private advantage of some individual or of some group of individuals, and if all efforts have failed to remedy this state of affairs by the means legally provided — then the people may justifiably have recourse to revolution in order to free themselves from oppression and establish or reëstablish a just government.

17. Government and Individual Rights. Now this largest possible liberty of the individual can be secured only by bringing it about that all other individuals shall pay strict regard to what the society in which he lives has recognized as his rights. It is only in organized society that rights can be said to exist at all; and as society grows more complex, new distributions and clearer definitions of rights

must take place; in other words, as society develops, government, which originated with the society itself, has constantly before it the progressive task of securing the greatest possible liberty of the individual compatible with the general welfare. During the long struggle up from savagery to the modern civilized state, this question of the distribution and maintenance of individual rights has played, indeed, is still playing, a most important rôle. Individual rights are not something fixed and unchangeable from the beginning and destined to remain fixed to the end. They are undergoing a constant but very gradual change, a change so gradual as not to interfere in the least with a very clear understanding of what they are at any particular moment.

18. Classification of Rights: Political Rights. In the United States the rights of the individual are divisible into two main classes, *political* and *civil*. Political rights are those which individuals possess in the matter of government. The right of the individuals of a state to establish a government has already been referred to (§ 16). This is an extra-legal right, *i.e.*, it exists independently of law. In addition there is the legal right of certain classes of individuals to share in government by voting or by holding office. It should be noted that not even in the United States are full political rights accorded to all individuals, while under some governments political rights of the second kind do not exist at all.

19. Civil Rights. Important as are political rights, it is to the much more numerous and diversified class of civil rights that those of fundamental importance belong. Civil rights are all those that are not political, all those possessed by the individual in his ordinary relations with the common-

wealth and with his fellow-citizens. Among them are the rights referred to in the declaration of independence as "unalienable," because we cannot be justly deprived of them except by our own acts: *e.g.*, the right of personal security (the right to be safe from injury to life, body, health, or reputation); the right of personal liberty (the right to pass freely, think freely, speak or write freely, wherever and whenever we please, provided we do not infringe upon the rights of others); the right of private property (the right to enjoy the results of our own labor and saving); and the right of religious liberty or freedom of conscience (the right to worship God as we see fit). Under civil rights also are included all rights which belong to individuals in their relations to other persons, *e.g.*, the rights involved in the relations between husband and wife, parent and child, employer and employed.

20. Government: Its Functions. The functions performed by government are not always and everywhere the same. They vary in different states and even in the same state at different stages of its development. There are, however, certain functions which in some form or other all civilized states have undertaken. For purposes of study these have been divided into two classes: constituent functions and ministrant functions.[1] By constituent functions are meant those "that are necessary to the civic organization of society," those which government *must* perform if the state is to continue to exist. To this class belong all those functions which have for their object the protection of life, liberty and property: such as the keeping of order and the furnishing of protection against violence and robbery; the

[1] Wilson, §§ 1232–1235.

fixing of the legal relations between husband and wife and between parents and children; the regulation of the holding, transmission and interchange of property; the determination of contract rights; the determination of the political duties, privileges, and relations of citizens; and the dealings of the state with foreign powers for the purpose of preserving it from external danger. By ministrant functions are meant those undertaken for the purpose of advancing the interests of the state; those which it has been thought convenient or expedient to have performed by government, though not actually necessary to the existence of the state. Such are, for instance: the regulation of trade and industry by such means as the coinage of money, the establishment of standard weights and measures, and the passing of tariff and navigation laws; the regulation of labor; the execution of internal improvements; the maintenance of postal and telegraph systems; the maintenance of waterworks, lighting plants, etc.; sanitation; education; care of the poor and incapable; care of forests and like matters; and sumptuary laws, such as prohibition laws.

21. Taxing Power. For the performance of these functions government must have money or the means of obtaining it. The men who have left the regular businesses of life for a time in order to devote themselves to the performance of public work (soldiers, sailors, policemen, judges, legislators, clerks, consuls, ministers, governors, etc.) must be paid for their services. Moreover, material means must be provided for the successful carrying out of the purposes of government. Buildings and ships must be constructed, munitions of war must be provided, books must be printed, and all must be paid for. Governments have, therefore,

been given the right to demand of the citizens the payment to the state of a portion of their wealth for the purpose of public expenditure, *i.e.*, governments have been given the right to levy and collect *taxes*.

22. Eminent Domain. Not only, however, has government been given this right of taxation, by which it demands wealth equally or proportionately from all citizens; it has also been given the right of eminent domain, by which it demands the surrender of private property by some citizens only, not by all. For instance, it may happen that the good of the community, the state, or the nation, may demand that a public building (a post-office or a custom-house, a navy-yard or a railroad) occupy or pass through a parcel of land owned and occupied by an individual. In all such cases, where it is clear that the general good will be promoted, any property of the individual may be appropriated by the government. Whenever property is thus appropriated, government recompenses the individual by giving him an equivalent in money.

23. Civics: Its Meaning. We may now return to our definition of civics with a fuller comprehension of its meaning. It is hoped that such terms as *society*, *government* and the *state* have gained in meaning for the student; and if they are clearly understood, our simple definition of civics as the science of government and of the relations of the citizen to the government will serve as well as a more elaborate one. It is hoped also, that the student has gained some idea of the wide scope of the subject on the one hand, and of its intimate relation to the affairs of his every-day life on the other.

24. Civics: Its Nature and Importance. In applying the term "civics" to the study upon which we are about to enter,

we are in reality laying claim to more than we are entitled to. Civics in its true sense is a study, not of the political institutions of some one particular nation like the United States, but of the fundamental principles underlying all government, whenever and wherever they may find application. What we are to study is not civics in this broad sense, but civil government in the United States. Nevertheless we should not lose sight of the inspiring fact that we are concerned with a part of one of the greatest sciences with which the human mind has busied itself. At the same time our study is of fundamental practical importance not only to the male voter but to every man, woman, and child in the community; for the happiness and comfort of mankind depend, it is hard to say how largely, upon the action of the government under which he lives. Almost his every interest is touched and modified by government. Finally, almost every one in the United States has a voice, either directly or indirectly, in deciding what shall be the ultimate form of our government as well as in determining its objects and functions.

Library References. — Ashley, §§ 1–8, 24–29, 33–36; Macy, *First Lessons*, Chaps. XXI, XXV–XXVI; Dawes, pp. 37–43; Hinsdale, pp. 9–16; Wilson, Chaps. I–II, XV–XVI, §§ 1154–1160; Encyclopædia Britannica, Article on *Government;* Century Dictionary; Lalor, Articles on *Government, Government Intervention, Taxation.*

QUESTIONS ON THE TEXT

1. Define civil government.
2. Is civil society a voluntary association? Give a reason for your answer.
3. Define state.
4. State two theories of the origin of government.
5. Define government. Why is government a necessity among men?

6. Define anarchy.

7. Show the necessity of laws, and state two limitations imposed by law on individual liberty.

8. Mention two purposes for which governments are instituted. Under what circumstances is revolution justifiable?

9. Show how public opinion operates as a check against abuses of government. How does selfishness and difference of opinion make government necessary?

10. Define right. What are civil rights? Can they be forfeited? Give a reason for your answer.

11. Distinguish between civil rights and political rights. Mention three civil rights.

12. What are political rights and how may they be forfeited? Is the right to vote at elections a political or civil (natural) right?

13. Explain and illustrate the meaning of the following statement: "Where a right exists, a duty always exists with it."

14. What do you understand by civil liberty?

15. Define taxation. Explain why the power to levy taxes is necessary to government. What possible danger is there in this power? By what right does government impose taxes on the governed?

16. Upon what principle is the right of taxation based?

17. Under what circumstances has the government a right to take the property of an individual without his consent? what is the right called ?

18. Explain the importance of the right of eminent domain to a national government.

19. Give two reasons why a knowledge of the principles and workings of government is necessary for the American citizen.

CHAPTER II

FORMS OF GOVERNMENT

25. Variety of Forms. Even the very young American abroad soon becomes aware of the fact, whether he understands its significance or not, that he is living in the presence of political institutions different from those at home. He is told that on such and such a day the *king* or the *emperor* will pass through a certain street and that if he secures such and such a position, he may possibly catch a glimpse of him. He hears of legislative bodies with strange names and possessed of powers very different from those of the congress of the United States. He meets with government officials whose duties have no counterpart in his home government. In his study of history also he can hardly make a beginning without coming upon political institutions of which he knows nothing by experience. And this all means simply that government, whose legitimate object is everywhere the same, has assumed and is still assuming a great variety of forms in order to accomplish its end.

26. Aristotle's Classification. Since the time of the Greek philosopher Aristotle, governments have generally been classified as monarchies (the rule of one), aristocracies (the rule of the few), or democracies[1] (the rule of the many).

[1] This and the term "ochlocracy" are not Aristotle's terms, but it is believed that they will convey his meaning more accurately than would his own terms.

These Aristotle considered the three standard or legitimate forms of government, each of which he believed tended constantly to pass into a corresponding perverted form. To the monarchy corresponded the perverted form of the tyranny or despotism; to the aristocracy, the perverted form of the oligarchy; to the democracy, the perverted form of the ochlocracy (mob rule or anarchy). He believed that states passed through a regular cycle of changes. Beginning as monarchies, they degenerated into tyrannies, in which the ruler used his power, not to further the interests of his subjects, but to oppress them. When this became unbearable, a few men of culture and character gained control of the government, and the state became an aristocracy (the rule of the best). This in turn degenerated into an oligarchy, in which the few who held the power did so not by virtue of character, but by virtue of birth or wealth. This oligarchy, becoming in turn intolerably oppressive, was overthrown by the great body of citizens, and a democracy was instituted, which soon degenerated into mob rule. From this the state could be rescued only by the power of some great leader, who thereupon himself assumed the reins of government, making the state again a monarchy and completing the cycle.

27. Inapplicable to Modern State. Aristotle's classification, based upon what he knew of the history of states and upon what he saw about him, represented very accurately the conditions of his time. Naturally enough it does not fit in perfectly with modern conditions. The great modern state was a thing undreamed of in Aristotle's philosophy. In his time there was no huge British Empire upon whose dominions the sun never sets. There was no Czar of all the

Russias, ruling as absolute monarch over millions of peoples differing widely in race and culture and over a territory inconceivably vast. There were no great federal states with populations bound indissolubly together by the ties of national unity, like the German Empire and the United States. There was just the ancient city state, made up of a single city with a very limited amount of outlying territory, occasionally possessed of a greater or smaller number of dependencies over which it exercised no very definite or regular control, and now and then acting temporarily as a member of a league or loose confederation of similar states. The idea of popular government, of democracy in the modern sense, was a thought as yet unborn.

28. Applicable to Earlier Forms. If we approach this matter of the classification of states historically, we shall find even among very early forms of government some that do not seem at first glance to fall into Aristotle's classification. Tribal government is the earliest known form of government. To be sure, the clan preceded the tribe and may be regarded as the germ out of which political organization developed; but its government is rather a matter of family discipline than of true civil government. In the tribe the authority of the head or chief is not *merely* paternal or patriarchal. It may be that, but it is more; it is political. Now the fact that each tribe has its paramount chief indicates clearly where tribal government belongs in Aristotle's classification. It is the rule of one, a monarchy. So also with patriarchy (the rule of the father), which is sometimes given as a separate form of government characteristic of a very early period of history. Theocracy, or government either directly by God or indirectly through his priests, also

sometimes given as a distinct form of government, may be regarded as either a monarchy on the one hand or an aristocracy or an oligarchy on the other: a monarchy, if God is conceived of as ruling directly; an aristocracy, if He rules through a select few who seek to promote the true objects of the state; an oligarchy, if those objects are perverted.

29. New Classification Necessary. Thus it is seen that these earlier forms of government fall readily enough into the old classification. The difficulty arises when we come to deal with the modern state. Monarchies still exist, to be sure, though in many respects they differ very widely from the ancient conception of the monarchy. Aristocracies, on the other hand, have disappeared from the modern political world. Great Britain, a hundred years ago, might still possibly have been pointed to as an example, but with the extension of the franchise (the right to vote) during the last century, that aristocracy also passed away. Finally, the modern republic or democracy *is* truly modern. It had not entered into the mind of the ancient world to conceive such an idea. If we hope then to secure a satisfactory classification of modern states, we must make a new one, or at least modify the old one to make it fit modern conditions.

30. What is Sovereignty? Before we attempt to make this classification, however, we must make clear, if possible, another very important political term, namely, sovereignty. We are all familiar, of course, with the word "sovereign" as applied to a king or an emperor; and if a foreigner coming to our country should ask us, "Who is your sovereign?" probably most people would answer unhesitatingly, "We have none." Now, as a matter of fact, a sovereign exists in every state, no matter what its form; in the United States no less

than in Russia; only in the one case sovereignty is vested in the whole body of adult male citizens, in the other in a single individual. Sovereignty may be defined as the supreme power by which a state is governed, whether that power be vested in an individual or in a number of individuals. It requires considerable care in some cases to determine exactly where in a state the supreme authority is to be found. It is by no means to be taken for granted, because a country has a king and calls itself a monarchy, that the nominal sovereign is the real one. The British monarch exercises less real power in the government of the British Empire than does our president in the government of the United States.

31. The Unitary State. States may be classified as (1) single or unitary states, (2) confederations, and (3) federations or federal states. Let us see if we can make clear the differences between these forms. The single or unitary state is the simplest form of the state. In it the national government exists quite independently of any minor communities or governments that may exist within it; while they, on the other hand, owe to it not only such powers as they possess but usually their very existence. They are mere subdivisions of the national government. Moreover, in this form of the state the general government operates directly not only upon such minor communities, but upon the individual citizens. In short, there is in the unitary state no suggestion of a division of sovereignty between two governments, one the national government, the other a subordinate government such as our state governments. France and Great Britain are examples of unitary states.

32. The Confederation. As to the confederation, it is sometimes questioned whether it can properly be called a state at all, since it very rarely if ever possesses the distinguishing characteristic of the state, *i.e.*, complete sovereignty. It is a union of states for certain definite purposes, particularly the purpose of defence, generally not very permanent in its character, in which the separate states retain their independence, delegating only certain portions of their authority to the union, which acts merely as their agent. Its members are not, as in the unitary state, separate individuals, nor does it deal directly with the individual. It has, as Mr. Bryce says, "no right of taxing him, or judging him, or making laws for him;" that power belongs only to the states. At the same time, in its relations with other states the confederation, so long as it exists, presents much the same character as the completely sovereign state and must be dealt with by such states in practically the same way. Perhaps the most famous confederation of ancient times was the Delian Confederacy in Greece. In modern times there have been several confederations of German states, resulting finally in the formation of the German Empire, which is a federation ; while a still more familiar instance is our own government as it was under the articles of confederation.

33. The Federal State. Examples of the unitary state have existed from very ancient times. Confederations also of longer or shorter duration have been formed from time to time throughout the course of history. The federal state is, on the contrary, a modern political development. In a way it may be said to stand between the unitary state and the confederation; or perhaps it would be more accurate to say that it combines the characteristics of both. Like the

confederation, it is a union of states; but unlike it, it is itself as unquestionably a state as is the most powerful of unitary states. The German language indicates very clearly the difference between them by calling the confederation a *Staatenbund*, the federal state a *Bundesstaat*, *i.e.*, to use Mr. Fiske's very satisfactory translation, the confederation is a *band of states*, the federation is a *banded state*. Like the unitary state, it has a direct claim to the obedience of the individual citizen; but unlike it, the subordinate communities are not mere subdivisions with powers delegated to them by the general government. In some spheres of state action they are completely independent states. In others, namely, in matters pertaining to the common interest, the union alone is supreme. Neither the national government nor the state government is completely sovereign. Sovereignty is in a way divided between them. To give a more formal definition, a federation is a state made up by the union of other states that have permanently surrendered their right to act independently in matters pertaining to the common interest, while they have in other respects retained their complete independence. Switzerland, the German Empire and the United States are examples of the federal state.

34. Further Classifications. Whether a state be unitary, confederated, or federal, it assumes in modern times one of two forms: it is either *monarchical* or *democratic*. Monarchies are subject to two further classifications: (1) they are either *absolute*, where the power of the monarch is left uncontrolled, or *limited*, where the power of the monarch is controlled by law; (2) they are *hereditary* or *elective*, according as the office is transmitted to the monarch in the line of descent or as he is chosen by the votes of his subjects or

of a part of them. Democracies likewise assume two forms: they are (1) pure democracies, in which all the members of the community share directly in the government; and (2) representative democracies or republics, in which the government is carried on by a comparatively small number of persons, who have been chosen by the whole body of citizens to act for them. Of the above classifications that into hereditary and elective monarchies is probably sufficiently clear. The others require some further consideration.

35. Absolute Monarchy. Among the great civilized nations of to-day the *absolute* monarchy is rare indeed. Russia and Turkey are the only countries in Europe that can be so classed; and even Turkey possesses a nominal constitution, though, in actual practice, no other law than the will of the Sultan is enforced. Where the absolute monarchy does exist, however, as in Russia, it differs very materially from the absolute monarchy of antiquity. The latter was governed, not by what we now call law, but by custom — rules of action that had been handed down from time immemorial and that bound the monarch as firmly as they did his humblest subject. The reign of this customary law the monarch could not disturb. He could only issue commands covering specific cases and affecting particular individuals. Not so with the absolute monarch of to-day. He may legislate on as large a scale as seems to him good; not issue edicts only, covering particular cases, but make general rules of law universally applicable. He may do that to-day, and to-morrow he may sweep it all away with a word, for his word is the only law. In short, the absolute monarch of to-day can wield a power that the reign of custom made quite impossible to the ancient monarch. In spite of this, however,

the ancient monarchy as contrasted with the modern limited monarchy was essentially an absolutism.

36. Limited Monarchy. The modern limited monarchy, called also the constitutional monarchy, is one in which the monarch is limited in the exercise of his power by the constitution of the kingdom. The extent of the limitations imposed varies greatly in different countries, and the resulting governments shade off from monarchies strongly tinged with absolutism to monarchies more democratic in some respects than the United States. All the advanced governments of the world, no matter what their form, have become during the last hundred years so deeply penetrated by the democratic idea that to-day we are quite justified in saying, as one writer does, that monarchies exist only by democratic consent.

37. Pure Democracy. There remains to be considered that form of government toward which all modern governments seem to tend in principle, at least, if not in form. The pure democracy may be passed over lightly. Assemblies in which all the people appear in order to take part in the discussion and to vote, become obviously impossible as soon as the body politic attains any considerable size. The pure democracy as a form of general government, *i.e.*, as a form of government for the whole people, has, therefore, passed out of existence among civilized nations. As a form of local government it still exists in this country in the town meeting and will be considered in its place. (§ 377.)

38. Representative Democracy. The democracy of the modern world has assumed another form; it has become the representative democracy or the republic. To be sure, this is not the only respect in which the ancient democracy differed from the modern. To us even the most democratic of

ancient democracies looks much more like an aristocracy or an oligarchy. It was always government by a class, and that class usually a minority of the whole population. But even with its very limited franchise the ancient democracy failed, because it either was in the beginning or soon became too large and unwieldy to remain a pure democracy, and it never hit upon the happy expedient of *representation.*

39. Representation. This scheme, by which the political powers of a whole class or body of individuals are delegated to a single individual who acts as their agent, had been in use among the ancestors of the English people even before they left their homes in North Germany and Denmark to found a new nation in the island country to the west of them; nor have their descendants ever relinquished their hold upon it. Of course, representation has not always meant representation of the whole body of citizens. Great Britain has been during the greater part of her history not a representative democracy, *i.e.*, a republic, as she now is (for Great Britain in spite of her monarchical form belongs in reality among the republics), but a representative aristocracy or oligarchy. Nevertheless it is to our English ancestors that we owe this great principle of representation. What our American forefathers did was to apply it not to a class but to a whole people — in other words, to democratize it. That, however, was a long step in advance. It meant that they had founded the first great nation in the world whose government seemed to offer a solution for the old problem of how to maintain democratic institutions in a country without placing impossible and undesirable restrictions upon its growth. Whether the problem has even yet been completely solved remains to be seen.

40. Constitutional Government: Origin. Besides the growing tendency toward democracy shown by nearly all modern governments, another closely related fact should be noted in regard to them. Nearly all modern governments either have been from the first or have become constitutional. Perhaps, indeed, that is only another way of saying that they have become more democratic. By a constitutional government is meant, of course, one that exists subject to a constitution; but we can perhaps best come at our definition of a constitution through a little sketch of its history. While the constitutional government is of comparatively modern origin, we find the idea that is always involved in a constitution, namely, the idea of an agreement between ruler and people or between the people themselves, existing from very early times. The central idea in early Jewish history is the covenant (*i.e.*, agreement, contract) between Jehovah and his people, while among the Romans the idea of the contract was adapted to the daily relations of life to a greater extent than in any other nation of antiquity. A contract may be defined as an agreement entered into by two or more persons mutually binding them to do or not to do a certain thing. The English people were thoroughly familiar with both the Jewish covenant and the Roman contract. The idea of agreement contained in them was first applied to political affairs in England in the form of the *charter*, which was a written concession from the king to a group of persons, by which he agreed to confer upon them certain privileges in return for certain duties which they were to render him. Such contracts were used largely for purposes of trade and colonization. Sometimes, however, they were purely political in character, as, for instance, Magna Charta

or the Great Charter reluctantly granted by King John in 1215, now the foundation of the British constitution; sometimes partly so, like the charters granted by the English government to some of the American colonies, which were made to serve to a great extent the purposes of a written constitution.

41. The Written Constitution. Long familiarity with the Jewish covenant and the use of the contract and charter, together with a wide spread belief in the then very popular "social compact" theory (§ 7) of the origin of government, turned English attention in the 17th century very clearly toward the written constitution; and several attempts at and suggestions for such a constitution were made without permanent result. It was among the American colonists, who had brought the idea with them from England, that the document often called, perhaps not quite accurately,[1] the first written constitution known to history was actually wrought out. This document, known as the Fundamental Orders of Connecticut, drafted in 1639 by the people of the three towns of Windsor, Hartford and Wethersfield, and confirmed by Charles II in 1662, created the government under which the people of Connecticut lived until that state had been for nearly thirty years a member of the union.

42. The Unwritten Constitution. Not all modern governments, however, are founded on written contracts; nor must it by any means be supposed that because a government lacks such a document, it is, therefore, not a constitutional government. Constitutions may exist quite as well in the form of precedents or laws generally recognized as the basis of the government without being committed to writing.

[1] See *Political Science Quarterly*, vol. 14, pp. 251–280.

and labelled as such. Under such an unwritten constitution the people know just as well what to expect of their rulers as they do in the United States; the principles on the basis of which government is operated are just as thoroughly established. If, then, we define a constitution as the fundamental law which determines the form of government and defines and limits its powers, we shall be able to include under the definition both the written and the unwritten constitution.

43. Rigid and Flexible Constitutions. We sometimes hear also of *rigid* and *flexible* constitutions. A constitution that has been written out, with each department of government carefully described and with every privilege mentioned, is likely to be much more difficult to change than one that has been expressed in no precise terms and with the general outlines vaguely sketched by usage. A constitution of the former sort is called *rigid;* of the latter kind, *flexible.*

44. What is the Best Form of Government? The question is not infrequently asked, "What is the best form of government?" It is not a question that can be answered dogmatically. There is no absolutely "best" form of government — best under all conditions. To conclude that republicanism, because it has been successful in the United States, would be an equally desirable form of government for the inhabitants of Borneo, let us say, or for the Chinese Empire, or for Russia, would be simply absurd. Perhaps the most we can say is that the best form of government is that through which, under given conditions, the state can best accomplish its end, whether that form be monarchical or democratic. It is nevertheless true that there are certain advantages and certain disadvantages naturally inherent in

each of these forms. The monarchy is naturally a strong centralized government, *i.e.*, a government in which great power rests in the hands of a single person; the republic, on the contrary, tends naturally toward decentralization, *i.e.*, division of political power among all the members of the body politic.

45. Centralization. The circumstances under which our own government came into existence have tended to fix very firmly in American minds the erroneous belief that centralization is necessarily an evil. Under some circumstances it may be the best possible form of government. In the first place it possesses the sometimes indispensable advantage of being strong on the administrative side, *i.e.*, of doing promptly and efficiently what it sets out to do. In a nation struggling for its existence against hostile nature or hostile men or both, this power of rapid and effective execution becomes absolutely indispensable. Even highly decentralized governments, such as that of the United States, have recognized this by granting to the chief executive extraordinary powers in time of war or similar emergencies. It is sometimes argued also that a better government can be obtained through a single man or a few men specially trained for their work than through a whole people, the great mass of whom are either too ignorant to know what is desirable, too indifferent to care, or too wicked to wish for it. The specially trained man — the political expert, so to speak — or he and his colleagues together, would be able to view impartially the whole field of governmental action, and then to act, not in the interest of a class or of a bare majority, but of the whole people. Such a government, it is argued, would free us from the so-called "tyranny of the majority."

Further, this concentration of power in the hands of one or of a few means also concentration of responsibility. Knowing where the power lies, we know also where to lay the blame and how to punish the wrong-doer in case that power is abused. On the other hand, there exists always in the centralized government the possibility that the ruler may fail to regard himself simply as a depositary of power to be used for the benefit of those who bestowed it, and may seize the opportunity to exploit his people in his own interest. Moreover — it tends to deprive the people of initiative, of self-reliance, of the willingness to undertake things for themselves.

46. Decentralization. From what has been said about the advantages and disadvantages of centralization it is perhaps easy enough to infer what are the principal arguments for and against decentralization. The verdict of history seems to be that for a settled industrial population, whose chief business in the world is their own development and the development of their country's resources, the decentralized, republican form of government is the most satisfactory. It furnishes on the whole the surest means of securing the interests of the whole people; it leaves individual initiative intact; it educates the people to political responsibility. On the other hand, it is likely to be administratively weak; there exists always the possibility that through the ignorance or indifference of the mass of the people low political ideals may prevail; and, since political responsibility is diffused, there is danger always of a weakening of the sense of responsibility.

Library References. — Ashley, §§ 9–13, 16–23; Wilson, §§ 1161–1181; Fiske, pp. 195–201, Chap. VII; Hinsdale, pp. 17–24; Lalor, Articles on *Monarchy, Democracy, Centralization and Decentralization, etc.*[1]

[1] Woodburn, pp. 47–58.

QUESTIONS ON THE TEXT

20. Define three forms of government known in history. Distinguish between them, giving an example of each. Mention the three most common forms. Give one element of strength and one of weakness in each form mentioned.

21. Define the following forms of government and give an example of each of them: (1) monarchy; (2) aristocracy; (3) oligarchy.

22. What is the earliest known form of government?

23. Mention one advantage and one defect of patriarchal government. What conditions make such a government impossible among civilized people at the present time?

24. What is meant by a sovereign state?

25. What is a democracy? a republic? What republic of the present time approaches most nearly to a pure democracy? Give reasons.

26. Explain the difference between a pure democracy and a republic. Give an example of each.

27. Which is the older form of government, a republic or a pure democracy? Explain.

28. Distinguish between a limited monarchy and a republic. Give an example of each.

29. Explain the vital importance of the principle of representation.

30. Show that in a democratic form of government the right to vote implies the duty to vote.

31. Show why the education of the masses is important in a republic.

32. Should an elementary education be given in this country at the public expense? Give a reason for your answer.

33. Distinguish between a despotism and a democracy. Give an example of each.

34. Define charter; constitution.

35. What is the object of a constitution? Illustrate by citing the constitution of the United States. Mention the first written constitution in history.

36. How many kinds of constitutions are there?

37. How is a written constitution formed? how is it adopted? Explain the advantages to the people of a written constitution over an unwritten constitution. Illustrate by reference to the government of the United States.

38. What form of government do you consider best? Give a reason for your answer.

39. Mention the principal objects of government. Under what form of government are these objects best attained? Prove your statement.

40. State the advantages or the disadvantages of a strongly centralized government like that of Russia as compared with a government like that of the United States.

41. State two conditions under which a monarchy would be a better government than a republic. Give reasons.

42. Contrast an absolute monarchy with a republic, showing advantages and disadvantages of each.

43. State the advantages and defects of a republican form of government.

44. Is a republic the best form of government under all circumstances? Give reasons.

CHAPTER III

COLONIAL GOVERNMENT IN AMERICA: ITS ORIGIN AND DEVELOPMENT TO THE CONSTITUTION

47. Introductory. We are not concerned here with the circumstances, however interesting, which prompted the settlement of so large a portion of America by English colonists. What does concern us is the character of the various governments established by them in those thirteen provinces, and the development which those governments underwent up to the time when they united to form the nucleus of a great federal state. For it should not be supposed that the makers of our federal constitution, great as was their work, were miraculously creating a government where nothing of the kind had existed before. Besides the clearly defined body of political principles that seems to be the birthright of every community of English descent, and besides their knowledge of the English constitution, they could rely upon their experience in state and constitution building in their own country. They were familiar with the history of the colonial governments up to the time of their transition to states, many of them had participated in the formation of state constitutions, and all had had opportunity to observe the working of government under state constitutions already adopted.

48. Charter Government. From the beginning, English colonists coming to America brought with them governments ready made, as it were, though not all of one type. The earliest form of colonial government in this country was that known as *charter government.* Colonization com-

panies secured from the king a sort of written permit called a charter, defining, usually very loosely, the geographical boundaries within which settlement was to be made, and determining much more clearly the rights and privileges of the colonists. These charters outlined a form of government for the colonies sent out under them, and were in reality a sort of imperfect written constitution. The governments established under them were democratic in their nature, the colonists being given the power of selecting for themselves a governor, a council, and an assembly, except in Massachusetts, where after 1691 the governor was appointed by the king. The governor and his council were not, as might be supposed, charged merely with the execution of the laws; they exercised also considerable legislative power. Important laws had to be referred to the king for his approval. Courts were established by the assembly; the judges were appointed by the governor. Except in Connecticut and for a time in Massachusetts, appeals from these courts were addressed to the home government. Of the original thirteen colonies, four — Massachusetts, Rhode Island, Connecticut, and Virginia — began as governments of this type; but Virginia was soon deprived of her charter (1624), so that at the outbreak of the revolution only three charter governments existed.

49. Proprietary Government. Those colonies that did not begin their existence as charter colonies were originally of the form known as *proprietary governments*. In the case of these colonies the grant of territory was made by the king, directly to an individual called a proprietary, who held it after much the same fashion as the feudal lords held theirs in earlier times. Although by the king's grants the pro-

prietaries were given very extensive powers of government, most of them as a matter of fact established governments nearly as liberal as those existing in the charter colonies. The governor and council, however, as well as the judges, instead of being elected, were usually appointed by the proprietary; and important laws had to receive not only his sanction but, except in Maryland, that of the king as well. Of the eight colonies that began as proprietary governments only Maryland and Pennsylvania and Delaware retained this form of government throughout the period of colonial history.

50. Royal Province. We find, then, that seven out of the thirteen colonies changed their governments during colonial times from the charter or proprietary form to some other; and this other was the third and last form of English colonial government in America — namely, the *royal province.* In these colonies the government came more directly into the hands of the mother country, though even here the colonists retained no small measure of independence. The king appointed the governor and the governor's council, the latter to act not only as an advisory body to the governor — a sort of cabinet — but also as the upper house of the colonial legislature — a senate. The governor had the right to veto any law passed by the colonial legislature as well as the power of assembling and dissolving that body. In him also resided the power of establishing courts and raising military forces. Of course, all important laws were submitted to the king for final approval or disapproval. All this, however, appears much more formidable than it was in reality, for the people everywhere retained the right to elect representative assemblies; and since these alone had

the power to lay taxes, the king's representatives found their high-sounding powers somewhat illusory.

51. Governmental Similarity in the Colonies. Thus, although there existed, at the outbreak of the revolution, three forms of English colonial government in America, the thirteen colonies showed a decided similarity in their political arrangements. "The differences related to the character and method of filling the governor's office." Two colonies selected their own governors, but in all the others that official was appointed by the king or the proprietary. Each had a legislative assembly chosen by the people, which controlled the expenditure of money and formed the lower house in the colonial legislatures. Each likewise had a governor and council, who, except in Pennsylvania and Delaware, participated in legislation. The council also acted as advisers to the governor and assisted him in the execution of the laws. The colonists were entitled everywhere to the rights and privileges of English citizens living in England. It should be noted also that everywhere the characteristic features of the English government were reproduced in the new country.

52. Transition to States. There came a time, however, in the history of these thirteen divisions when they ceased to be called colonies and became states. The essential characteristic of a colony is its dependence upon a mother country. There came a time, then, when they ceased to have a mother country and became independent communities. The events that brought into existence the declaration of independence need not be recounted. Some changes in the forms of government were inevitable when the ties were broken that bound the colonies to the mother country. As a matter of

fact, the reorganization of the colonial governments anticipated by more than a year the separation of July 4, 1776. As early as May, 1775, Massachusetts asked the advice of the continental congress on the subject of changing her form of government in view of her hostile relations with England. Three other colonies followed her lead, and congress finally advised them to establish a satisfactory form of government "during the continuance of the dispute with Great Britain." In May, 1776, congress took a more decisive step, one that really involved the complete independence of the colonies, by recommending "the respective assemblies and conventions of the United Colonies . . . to adopt such a government as shall in the opinion of the representatives of the people best conduce to the happiness and safety of their constituents in particular and of America in general." Thus in all the colonies but three the change from colony to state was effected before the declaration of independence; but in many states the change was regarded as provisional, looking forward to a reconciliation with England. The governments adopted were all based on written constitutions. In most cases the change from colony to state was effected in haste, and in two colonies, Connecticut and Rhode Island, a simple resolution of the colonial legislature perpetuated the old government, omitting, of course, the king.

53. The Early State Governments. The form of government provided by these state constitutions was very similar to that with which the states had been acquainted as colonies. No radical changes were effected; for a people does not break suddenly with old customs and traditions. The governments were republican in form, though not every male

person was allowed to share in them, the right to vote resting usually on a property qualification.[1] The old colonial legislatures were replaced by state legislatures consisting usually of two houses — a lower house apportioned according to population and elected by the qualified voters; an upper house equivalent to the old colonial council, in some states elected, in others appointed, and possessed of a higher property qualification than the other. The oppressive conduct of the king's agents, the royal governor and his council, had made the colonists extremely suspicious of a strong executive; and with the possible exception of Massachusetts, the new states gave the governor little real power. In four states there was a plural executive. The old colonial system of courts was maintained with few changes Perhaps the most important of those that were made was the provision for a final court of appeal in all the states but Georgia, and for a change in the method of selecting the judges. In some states they were appointed; in others, elected. In almost all the states their independence was secured by providing for long terms.

54. Local Government: The Town. In addition to these general provincial or colonial governments, however, there were in each colony subordinate forms of government. These had a greater influence, perhaps, in shaping the political character of the American people than had the governments of the larger areas just described. Of these subordinate governments the most important in many respects was the town or township. This form of local government is older than the English nation itself. When the Germanic tribes that were destined to grow into that nation left their

[1] Montgomery, p. 146.

homes in North Germany and migrated to England, they brought with them this thoroughly democratic form of government; and not only that, but they called it by the same name. Our word "town" is just the old Anglo-Saxon word *tun* in modern dress. Tun meant originally the wall or boundary about a village, maintained probably for purposes of defence; but later the word came to designate first the enclosed space and then the community and the government peculiar to it. All the important business of the tun was transacted in a *tungemot* or *tun moot* (town meeting) made up at first of freemen, later of tenants, as the towns often fell into the hands of great nobles. The most important powers of this meeting were to enact "by-laws" (*i.e.*, etymologically, town laws) and to try petty offences. The chief officers of the tun were the *gereja* or *reeve* and the *bydel* (beadle, or messenger), who were chosen by the people where the tun was free, but appointed by the lord where it was dependent. The town was also the unit of representation for the larger areas of government.

55. The Parish. Long before the settlement of America began, however, England had been divided not into towns only but into parishes. The parish generally coincided in area with the town, and was at first merely the town organized for religious purposes; but when the towns, having for the most part fallen into the hands of the great feudal lords, had become manors and had lost many of their ancient privileges, self-government still survived to a very considerable degree through the parish, which gradually became a civil as well as an ecclesiastical division. When the Pilgrims came to America in 1620, they left the lords of the manor behind them. There was no longer any need for perform-

ing civil functions through an ecclesiastical body; and the old term "town" or "township" became again the name of the local civil division, though the term "parish" was retained to designate the township as a religious division.

56. The Town in New England. There were several reasons why this very democratic form of local government was peculiarly adapted to the needs of the New England settlers. As we have already seen (§ 37), pure democracy can succeed only in communities of very limited size; and circumstances in early New England all combined to keep the communities small, or rather to keep them compact. In the first place, the settlers, having come to the new world by congregations led by their own clergymen and desiring to worship in their own churches, naturally settled in somewhat compact bodies about their churches. Moreover, they found the country ill-suited to farming on a large scale after the manner of the Virginia plantations, so that a majority of the people lived on small farms close together. And finally, this compactness afforded needed protection against hostile Indians; though fear of the Indians would probably not have prevented the scattering of the colonists, had that seemed otherwise desirable.

57. The Town Meeting. In those colonies where town government was adopted the town meeting was the real core of political life. All the male inhabitants of legal age (in some colonies the additional qualification of church membership was prescribed) attended the sessions, which were in some cases "frequent enough to encroach upon the ordinary business of the community." A chairman called a moderator was chosen by the assembled people as presiding officer, and the minutes were kept by the town clerk. The

business of the meeting was (1) to levy taxes for the purpose of paying the minister's salary, providing for schools, etc.; (2) to choose town officers and representatives to the colonial legislature; and (3) to make by-laws regulating the construction of fences, the laying of boundary lines, and the making of roads. The execution of the more important laws was intrusted to the officers chosen in this meeting. Probably the most important of these were the selectmen, — from three to thirteen in number, — the constables, and the town clerk. The selectmen were the financiers of the town and appointed many of the minor officers, the constable made arrests, and the town clerk kept the records. The judicial business was intrusted to one or more justices of the peace.

58. The County: Its Origin. While the town was so important a unit in New England, other forms of local government were adopted and had a vigorous growth in other parts of the thirteen colonies. Probably next in importance to the town was the county. Here again is to be seen the reappearance of an English form of government in the new country. The American county traces its origin back to the time when the people of England lived in tribes and were governed by chiefs. There came a time when the separate tribes were welded together to form an English nation. When this change came, the old lines of division were not entirely obliterated, the districts formerly occupied by the separate tribes being retained as shires (parts cut off) for the purpose of caring for the local needs of every part of the country. The shire, then, was a much larger division than the tun or town, and included within its borders many of these smaller units. It was not, however, later in origin, but developed side by side with the smaller unit.

59. The Shire Becomes the County. As the shire was larger than the tun, its government partook more of the representative character than did that of the latter. Its moot or meeting was not primarily a law-making body, but a court for the trial of important cases and a means of collecting revenue to fill the national treasury. The shire-reeve (sheriff) was the financial agent of the king in the shire, besides being intrusted with the care of the criminals. The ealdorman ("elder" man) sat in the moot as the interpreter of the law for the assembled people. Long before the settlement of America, however, the shire had become generally known as the county, *i.e.*, a district administered by a count. This change, along with many others, was due to the conquest of England by the Normans. Not only did the shire become the county, but the ealdorman was replaced by the count, and the shire-moot became the county court. The functions of the shire were, however, retained.

60. Adoption of the County in America. This form of government, so materially different from town government, was introduced largely in the southern colonies, appearing first in Virginia. For a widely scattered population, such as that of Virginia soon became, town government would have been practically impossible even had the people desired it. The followers of Smith had indeed first settled in villages, but all the circumstances in early Virginia operated against the building up of towns and in favor of the development of great plantations. The extreme fertility of the soil, favoring as it did the cultivation of great crops of tobacco, tended naturally toward the creation of large estates; and this tendency was facilitated by the rise of slavery. Moreover, numerous navigable rivers made it possible for most of the

planters to transport their goods directly to England and to import their supplies directly from there; so that there was no occasion for the building up of market towns.

61. The Virginia County. Like its prototype in England the county in Virginia was primarily an area for the administration of justice, though the county court performed some other duties not distinctly judicial in character. This court consisted usually of eight justices of the peace, who were nominally appointed by the governor. As a matter of fact, however, the court really filled its own vacancies; for it was customary for them to nominate the candidates to be appointed by the governor. Besides exercising jurisdiction over certain civil and criminal actions and over the administration of wills, etc. — *i.e.*, besides its ordinary judicial functions — the county court had the care also of the bridges and highways and assessed the county taxes. The mere enumeration of the duties performed by the county court, however, gives little idea of the real importance of the county in the political life of the colony. It was the unit of representation in the colonial legislature just as the town was that unit in New England; and in spite of the absence of a democratic assembly like the New England town meeting, the county with its county court and its frequently recurring "court days," when people of all sorts and conditions came together at what we should now call the county seat, to buy and sell and to discuss public affairs, was a scarcely less influential factor in the development of political life than was the New England town meeting.

62. New England Adopts the County. Thus the town in New England and the county in the south were the principal means of caring for the local needs of the colonists.

The people of New England, however, soon found that the county provided for many needs that the town could not conveniently supply, and so introduced the county to supplement the town. The town, however, still remained the more important unit. This practice of adding the county seems to have been universal wherever the town developed, but the town was not as a rule adopted by those colonies where the county was introduced. Other forms took the place of the town — notably the parish, the hundred and the manor.

63. The English Parish. The parish has already been alluded to as the form assumed by the English town long before the settlement of America. Its affairs were administered by vestrymen, who were chosen by the whole body of church members, or "rate-payers" as they were called. If it is remembered that this body was made up of the same persons who had been members of the town meeting, that it was, in other words, only the town meeting in its ecclesiastical aspect, it will not be difficult to understand how it came about that the parish, after the growth of feudalism had turned the town into a manor, should inherit such portion of the town's privileges as did not pass into the hands of the barons. Thus it happened that the rate-payers in the English parish elected not only church officers, but surveyors of highways, collectors of taxes and overseers of the poor as well; and the parish still retained the right to enact by-laws.

64. The Parish in Virginia. This English parish reappeared in Virginia and in some of the other southern colonies, but the Virginia parish was not a faithful copy of its original. In Virginia taxes were assessed and by-laws

enacted, not by the whole body of church members, but by twelve men elected by the people. Thus even in the parish government was representative instead of purely democratic. After a time even representative government was given up, and these twelve vestrymen "obtained the power of filling vacancies in their own number," so that the parish became oligarchical in its character. This vestry "apportioned the parish taxes, appointed the church wardens, presented the minister for induction into office, and acted as overseers of the poor." The hundred was likewise an old English division, as was also the manor; but neither was widely adopted in America.

65. The Mixed System. It was left for the great middle colonies of New York and Pennsylvania to develop, by means of a combination of both town and county governments, a system of local government that has been copied with some modifications throughout the United States. By a wise distribution of powers between the town and the county there was produced "a vigorous town government possessing all the necessary means of self-help, coöperating with, and in some measure dependent on, a strong county administration." The bond of connection was a county commissioner or supervisor, who corresponded to the selectman in the New England town, and was at the same time a member of the legislative body of the county. Under this organization the sheriff of the Virginia county and the important officers of the New England town were retained with their more important duties, but the town meeting lost something of the importance that characterized it in New England.

Library References. — Ashley, §§ 40, 42, 46–47, 51–76, 92–93; Macy, Chaps. I–IV, XIV–XVII; Fiske, pp. 16–54, 57–80, 146–172; Hinsdale, Chaps. I–IV; Wilson, §§ 832–856, 995–1005, 1018–1028; Bryce, Vol. I, pp. 427–433, 589–593; Bancroft, Vol. V, pp. 111–125; Schouler, Vol. II, pp. 208–215; McMaster, Vol. III, pp. 146–162; Channing, Chaps. II–III, pp. 198–200; Montgomery, pp. 145–148; Fiske, *American Political Ideas*, pp. 17–56; Fiske, *Old Virginia and Her Neighbors*, Vol. II, pp. 30–44; Thwaites, pp. 55–63, 109–110, 192–193; Hart, pp. 80–82; Tyler, *Patrick Henry*, Chap. XII; Roosevelt, *Gouverneur Morris*, Chap. III; Roberts, Vol. II, pp. 434–436; Stubbs, *Constitutional History*, Vol. I, Chap. V; Taswell-Langmead, pp. 17–19.

QUESTIONS ON THE TEXT

45. Describe two different forms of colonial government that prevailed in this country before the revolution.

46. Explain the origin and trace the development of the town as a unit of government; the county.

47. Describe the development of the town in England. Account for the transference of the town to America.

48. Describe the New England township and show in what respect it is (1) a direct government by the people; (2) a unit of representation.

49. (1) State briefly the origin and influence of the town meeting; (2) Why did the township become the unit of government in New England and the county in Virginia? (3) What was the *parish?*

50. Show the importance of the town in its relation to the principle of representation. Explain its importance as an aid to the maintenance of popular government.

51. Give historical facts tending to show the sources from which our ideas of the county are developed.

52. Describe the development of the county in England, and explain the modifications it has undergone on American soil.

CHAPTER IV

ATTEMPTS AT UNION (1643–1777)

66. Reluctance to Unite. Accustomed as we now are to thinking of our nation as a unit and of the union as indissoluble, it is difficult for us to realize the separateness of the colonies, or to understand the reluctance with which they yielded to the slowly growing sentiment in favor of union. Between the formation of the first intercolonial league in America and the adoption of our federal constitution there elapsed almost a century and a half, the last quarter-century of which was crowded with events of such a character as to compel recognition of the necessity of union; yet even then so imperfectly was the lesson learned that, after seventy years more, there was required, in order to teach it completely, the costliest and bloodiest civil war known to history.

67. Influences Favoring Union. There were, of course, from the beginning strong forces operating to draw the colonists together; had there not been, our present union would have remained forever impossible. The colonists were nearly all of English descent, and all in a way Anglicized; for even where other elements had entered into the population, the English type had prevailed. They all spoke the English language; they were protestants in religion, however fiercely controversies might rage between sects; they all possessed English ideas of political justice and English political institutions. Finally, and this was the immediately impelling force at each advancing step toward union, they

were all threatened by the same enemy — at one moment the Indians, at another the Dutch, at another the French, at another the mother country across the sea.

68. Disintegrating Forces. With such motives as these impelling to union, the wonder is that it did not come sooner. The fact that it was so long delayed gives some measure of the forces tending in the opposite direction. It may fairly be said that, until the revolution was actually upon them, the colonies were more distinctly conscious of their separateness than of their unity, and, on the whole, more desirous of maintaining it. From the beginning every colony had been politically separate from every other; and if, as happened once or twice, a league was formed for the accomplishment of a specific purpose, the colonies concerned took good care to make it clear that they meant to surrender no part of their independence. In spite of their physical nearness there was no more political connection between New York and Virginia than between New York and the British possessions in India. Both were more or less directly subject to the home government, and that was all. Even geographically the colonies were less closely united than they seem to us now. Had they been planted along some great interior waterway like the Mississippi, commercial necessities would soon have forced them into some sort of union; but scattered as they were along the coast, each possessing its own coast line, its own harbors, and its own interior waterways, it was possible for them to remain for an indefinite period commercially independent of each other. Moreover, communication between the colonies was by no means easy. In the stormy winter the voyage along the coast was dangerous and difficult; while the land journey, lying often through

pathless wildernesses, was even slower and more perilous. To travel from Charleston to Boston by land required as much time and involved no fewer hardships than did a voyage across the ocean. Industrial differences, too, kept the colonies apart. Here shipping was the chief industry; there wealth consisted principally of slaves; elsewhere the population was made up mostly of small farmers. And finally, it should be remembered, population was in many regions so sparse and governmental action so little felt either in the way of assistance or restraint, that many of the colonists hesitated to subject themselves to a new government, lest they should lose their cherished independence. Of local pride and patriotism there was enough and to spare; but it was only the stress of the approaching revolution that quickened into life the feeling of national unity. Until then, as has been said, "with the exception of the larger spirits, Carolinians were content to be Carolinians, Virginians to be Virginians, New Yorkers to be New Yorkers."

69. The New England Confederacy. In view of these disintegrating tendencies, all the pre-revolutionary attempts at union among the colonies are important. They are the means by which was slowly formed the habit of acting together, without which the revolution must have ended in failure, and which was destined to form a stable basis for the new-born government. The first intercolonial union ever formed in America was a league entered into in 1643 by the colonies of Plymouth, New Haven, Connecticut, and Massachusetts, and known as the United Colonies of New England or the New England Confederacy. Later New Hampshire became a member of the union, but the two other New England colonies, Rhode Island and Maine, which we might

have expected to find included also, were left out on religious grounds. The league grew out of the necessities of the time. Surrounded on all hands by enemies, with the energetic Frenchman grasping eagerly at coveted trading stations, with the sturdy Dutchman pushing steadily closer to their borders, with the wily Indian watching unremittingly for any sign of weakness, the New England colonies were forced to seek strength in union; particularly since the English government was engaged in a struggle at home too desperate to admit of its affording any protection to these distant colonies.

70. The Confederacy a Step Toward Union. In its nature the confederation was of the loosest sort, and Massachusetts refused on occasion to be bound by the agreement entered into on the formation of the league; but in spite of this the union lasted more than forty years, going to pieces finally in 1684, the same year in which Massachusetts lost her first charter. There can be no question that the confederation was of the greatest assistance to the colonies in the accomplishment of the ends for which it had been directly formed; but it could hardly have existed so long without producing, as its indirect effect, a completer sense of community of interests in the colonies concerned.

71. Albany Congress. Even before the dissolution of the New England confederacy, there had been suggested a plan for the union of all the colonies on a military basis. This suggestion had been made in 1660 by a royal commission known as the council for foreign plantations, but nothing came of it. After the dissolution of the New England confederacy and during the long period of the wars with the French, combined action on the part of the colonies

was frequently necessary, a number of conferences occurred, and a series of similar suggestions for union was made, the plans emanating now from the colonists, now from the home government, but none of them resulting in any action. Finally, in 1754, occurred the conference or convention known as the Albany congress, called at the suggestion of the home government for the purpose, among other things, of devising some plan for concerted action on the part of the colonies in the event of another war with France. Seven of the thirteen colonies — New York, Pennsylvania, Maryland, New Hampshire, Massachusetts, Rhode Island, and Connecticut — sent representatives. The convention appointed a committee to draw up a plan of union and accepted the plan presented, which was principally the work of Franklin.

72. Franklin's Plan. According to this plan the affairs of the united colonies were to be administered by a "president-general" and a "grand council," the latter to be elected by the colonial assemblies. The president-general was to be appointed by the crown and was to possess the veto power over the acts of the council. The grand council was to consist of forty-eight representatives, apportioned among the colonies according to "the proportion of money arising out of each colony to the general treasury;" but no colony was to have less than two representatives nor more than seven. It was to be the duty of the council to enact ordinances of general interest, to promote the general welfare, to appoint civil officers with the consent of the president-general, to provide for the defence of the colonies by apportioning the quotas of men and money to be raised by the various colonies, and to control the army. Though the plan had been unanimously accepted by the convention, it met

with rejection at the hands of both the home government and the colonial assemblies, the colonists declaring that it gave too much power to the crown, the home government regarding it as too democratic. The convention, though it failed to effect an immediate union of the colonies, nevertheless assisted in no small measure in making union ultimately possible; for it brought together for the first time leading men from nearly all the colonies and engaged them in discussions, which must have done much to break down local prejudices and to awaken a sense of common interest among the colonists.

73. Stamp Act Congress. Eleven years passed after the dissolution of the Albany convention without the meeting of another intercolonial congress. Then in 1765, after the British parliament had passed an act levying upon the colonies a stamp tax, the revenue to be used toward the support of a regular army in the colonies, there occurred the stamp act congress. It will be seen at once that this congress was very different from anything that had preceded it. All previous attempts at union among the colonies had been made either at the suggestion or with the approval of the home government for purposes of defence against some outside enemy; and the sentiment in favor of union had never been strong enough to render any of the proposed plans of union acceptable to more than a few of the colonies. By the passage and attempted enforcement of the stamp act the British government accomplished at a blow the coöperation of the colonies that it had vainly tried to effect during the long period of the French and Indian wars; only now the efforts of the union were to be directed against the mother country herself instead of her old rival, France.

74. Work of the Congress. The congress, which had been called by the Massachusetts house of representatives, met in New York in October, 1765, with representatives present from nine colonies (Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Maryland, Delaware, South Carolina) and promises of support from the rest. Though unquestionably a revolutionary body, having no right to exist under the British constitution, the congress seems to have been made up for the most part of moderate men, who were able to content themselves with drawing up a declaration of the rights and grievances of the colonies, and petitions and memorials to the king and to parliament. Considering the state of excitement into which the colonies had been thrown by the attempted enforcement of the stamp act, this seems to us now like mild action. As a matter of fact, the declaration of rights contained much that only the boldest spirits would have ventured to assert a year earlier. Affairs had been moving rapidly in the colonies. The stamp act congress no longer demanded, as Otis of Massachusetts had done in 1764, representation in the house of commons; it declared instead that "the people of these colonies are not, and, from their local circumstances, cannot be, represented in the House of Commons," and that no taxes "can be constitutionally imposed on them, but by their respective legislatures."

75. Committees of Correspondence. During the nine years that elapsed between the meeting of the stamp act congress and that of the first continental congress, events were crowding each other rapidly in the colonies. It would be inexpedient to rehearse them all here. Our task is to trace as clearly as we can the growth of the movement

toward a permanent union. In 1768, after the passage by parliament of further revenue acts, the Massachusetts legislature sent a circular letter to the other colonial assemblies suggesting concerted action on the part of the colonies, and received favorable replies. It was not until 1773, however, that a plan was devised for keeping the colonies continuously in touch with each other and organizing them for effective action. This was brought about through colonial "committees of correspondence." The year before, local committees of correspondence had been appointed in the various towns of Massachusetts for the purpose of considering the rights and grievances of the citizens and ascertaining the state of public opinion in regard to them. This suggested to Virginia the advisability of similar committees in the various colonies. Accordingly in 1773 such a committee was appointed by the Virginia assembly, whose example was soon followed by the assemblies of Massachusetts, Rhode Island, Connecticut, New Hampshire, and South Carolina. Later the disturbances precipitated by the attempts to collect the tax on tea brought six more colonies into line, so that finally only Pennsylvania had no committee of correspondence. This was the longest step yet taken toward the political union of the colonies.

76. The First Continental Congress. The first continental congress was brought about directly by a series of parliamentary acts intended to put an end to such disturbances as had arisen in connection with the tea tax. Most of these measures were directed against Massachusetts; but the other colonies saw in them a menace as well to their own liberties, and the protest was general. New York and Rhode Island proposed a general congress. The Virginia

house of burgesses appointed a day of fasting, and when dissolved for this action, immediately formed themselves into a convention and advised, among other things, annual intercolonial congresses. The actual call, however, came from Massachusetts in June, 1774. The congress met in Philadelphia in September of the same year, with fifty-five delegates present, representing twelve colonies. In Georgia the governor had succeeded in preventing the appointment of representatives. The work of the congress consisted in the drawing up of a declaration of rights hardly more radical than that of the stamp act congress, together with a petition to the king, and the more important work of establishing the "American Association" to enforce the non-importation agreements already existing. Before adjournment in October the congress provided for the meeting of a new congress in May of the following year, in case the grievances of the colonies were not redressed in the meantime.

77. A Union Formed. The first continental congress, like the stamp act congress, had been simply an advisory, or at most, an executive body. Its successor, on the other hand, found itself compelled by the pressure of events to assume almost at once a much wider range of activity. With the meeting of the first continental congress the colonies may be said to have accomplished a sort of union, imperfect as yet, to be sure, but still a union; but it was not until after the second continental congress had begun its work that the demand for independence was openly voiced. Up to that time the colonists had been striving simply to maintain what they conceived to be their rights as Englishmen, and most of them looked with no little disfavor upon any suggestion of separation from the mother country. Now

the course of events brought about a rapid change of sentiment.

78. The Second Continental Congress. Early in its history this second congress had drafted a new petition to the king, generally known as the "olive branch" petition. To this the king did not even pay the courtesy of a formal answer. Instead, he issued a proclamation declaring the colonists to be rebels, closing the American ports, and warning foreign nations not to trade. This contemptuous treatment convinced many that the colonists need hope for nothing at the hands of the king; and when, shortly after, the news reached America that the British government had hired German soldiers to help fight their battles in the colonies, even the most conservative began to admit the necessity of separation. The colonies were besides sufficiently well organized politically to make separation possible. As we have already seen (§ 52), state governments had been organized by the advice of congress during the year preceding the declaration of independence; and the events of that year had compelled congress to assume also the functions of a general government. It had established an army, drawn up regulations for its government, and appointed a commander-in-chief; it had established a committee of correspondence with "our friends abroad," and had opened the American ports except to British vessels; it had issued paper money; finally, it adopted the declaration of independence and appointed a committee to draft articles for the government of the states thus newly created. Then, after making provision for funds for the prosecution of the next year's campaign, the second continental congress temporarily adjourned in December of 1776. Continental con-

gresses continued to meet with only short periods of intermission from this time until the ratification of our present constitution; but their work, except as it concerns the articles of confederation and the constitution, is matter for history rather than civics.

Library References. — Ashley, §§ 77–91; Macy, pp. 36–38; Montgomery, pp. 75, 94–95, 138, 163–172, 175–176, 179–182, 184–186; Fiske, pp. 209–213; Hinsdale, pp. 69–72, 424–453; Bryce, Vol. I, pp. 19–20; Channing, pp. 91–95, 138–139, 153–206; Curtis, Vol. I, Chaps. I–IV; Thwaites, pp. 142–143, 154–159, 161–164, 269–271; Roberts, Vol. I, pp. 316–317; Hart, pp. 50–63, 73–80; Lalor, Articles on *Albany Plan of Union, Continental Congress;* Bancroft, Vol. I, pp. 291–296, Vol. II, pp. 385–388, Vol. III, Chap. XII, Vol. IV, Chap. IV, XXVIII; Frothingham, *Rise of the Republic of the United States;* Fiske, *American Revolution*, Vol. I, Chap. III–IV.

QUESTIONS ON THE TEXT

53. Over how long a period did the attempts at union extend?

54. Mention some of the conditions which made union between the colonists possible and desirable.

55. The geographical and industrial conditions of the colonies made them independent of one another. Explain how.

56. When and for what purpose was the first union of American colonists formed? What name was given to this organization? Show how it developed into the confederation of 1777.

57. For what purpose and by whom was the Albany congress (convention) of 1754 called?

58. Outline Franklin's plan of union. How was the plan received by the colonists and the home government?

59. When and for what purpose was the stamp act congress called? Where was it held? How did it differ from other early conventions and congresses?

60. Give an account of the first continental congress (1774), and of the second continental congress (1775), touching the origin, the organization, and the work accomplished by each.

CHAPTER V

THE ARTICLES OF CONFEDERATION [1] (1781–1789)

79. Need of Legal Basis for the Union. It is clear that the continental congress felt from the first the necessity of making permanent the union of the colonies now effected by placing beneath it a definite legal foundation. Almost a year before the adoption of the declaration of independence, while the sentiment in favor of separation from the mother country was still weak, congress considered a plan drafted by Franklin for the "confederation and perpetual union" of the colonies. The title by which the union was to be known — the United Colonies of North America — shows that independence was not yet contemplated. It is fortunate that Franklin's plan was never adopted. Had it been, it would almost certainly have formed the basis of the new government when the declaration of independence brought into existence a new nation, and would have long delayed, if it had not altogether prevented, the adoption of our present constitution; for, though it failed to provide a strong central government, it avoided the most glaring defects of the articles of confederation, and might have been amended so as to furnish a practicable, if far from perfect, scheme of government for the new state.

80. Drafting and Adoption of Articles. A year later we find congress again concerned with the question of provid-

[1] For articles of confederation, see Appendix.

ing a basis of law for the union, which was now about to become a union of states instead of a union of colonies. On the same day two important committees were appointed, one to draft the declaration of independence, the other to draft articles of confederation for the states about to be created; but more than a year elapsed before the articles were adopted by congress, and it was not until 1781, when the war was already drawing to a close, that they were finally ratified by all the states and became the law of the land.

81. Delay in Ratification. The reasons for the delay in the ratification of the articles by the different colonies were in part the same that had made any sort of union difficult — mutual jealousy and distrust on the part of the states and fear of any superior government. There was, besides, a clear recognition in some states of the inadequacy of the proposed government as well as a definite objection to certain provisions of the articles, particularly that by which power was apportioned equally among all the states regardless of size, wealth or population. The delay was occasioned chiefly, however, by the dispute concerning the land claims of some of the states to portions of the region lying west of the Alleghanies. Basing their claims for the most part on the old colonial charters, which had extended their boundaries indefinitely westward, the states contended that they had succeeded on the declaration of independence to all the powers of the British crown in this unoccupied territory. Not all the states, however, were possessed of such claims, and those that lacked them objected strenuously to allowing them in the cases of the others. If independence were achieved, they argued, it would be by the

united efforts of all the states, and these unoccupied lands ought to belong to the confederacy for the benefit of all. Accordingly some of the states refused to ratify the articles until some agreement should be reached in this matter. Finally, in 1780, New York ceded to the United States the lands claimed by her, Virginia promised similar action, and Maryland, the last of the states to ratify, withdrew her opposition and formally signed the articles on the first of March, 1781.

82. Character of the Government Established. The government established by these articles was something very different from our present federal government. It was a confederation, not a federal state; a league, not a national government. This the framers of the articles took pains to make clear. The union is called "a firm league of friendship" between the states "for their common defence, the security of their liberties, and their mutual and general welfare," and it was not intended to be more than a league. It required nearly a decade of unsuccessful effort to carry on the government under the articles, in order to convince the members of the confederation that the maintenance of such a league was impossible without a further surrender of sovereignty on the part of the individual states than was provided for in the instrument.

83. Powers of Congress. Under the articles the powers of the federal government were vested in a congress consisting of a single chamber, whose members represented not the people of the United States, but the separate states; and each state, though it might send any number of delegates from two to seven, had but a single vote in the decisions of congress. In other words, the articles simply legalized the

existence of the continental congress without changing its character. To this body was intrusted the sole power of dealing with foreign nations, whether in the way of sending and receiving ambassadors, negotiating treaties, declaring war or concluding peace; but it was prohibited from entering into any commercial treaty which should in any way interfere with the right of the state legislatures to impose duties or prohibit the exportation or the importation of commodities. Congress was given also the power "to ascertain the necessary sums of money to be raised for the service of the United States and to appropriate and apply the same for defraying the public expenses;" to borrow money or emit bills of credit; to determine the number of land forces to be raised and to make requisitions from each state for its quota; to build and equip a navy; to appoint all naval officers and all except regimental officers for the land forces; to make rules for the government of army and navy and to direct their operations. The money for defraying federal expenses, however, was to be drawn from a common treasury supplied by the states, the taxes for paying each state's proportion to be levied by the state legislature; and the land forces were to be raised, clothed, armed, and their regimental officers appointed by the state legislatures.

84. Other Provisions. In judicial matters the powers of congress were limited to the establishment of courts for the purpose of dealing with offences committed on the high seas, and to the settlement on appeal of controversies between states. It was also the business of congress to regulate the value of coin, fix the standard of weights and measures, manage Indian affairs and establish post-offices. Two other provisions should be especially noted, since it was their

existence particularly that made government under the articles practically impossible. By one of these, congress was prohibited from taking any important action without the assent of nine states; by the other, no amendment was possible without the ratification of every state.

85. Defects of the Articles. So long as the pressure of the war lasted, congress was able to secure some degree of concerted action on the part of the states; but the articles had hardly gone into effect when that pressure was withdrawn and their defects became promptly and increasingly apparent. They were the defects naturally inherent in a confederacy under circumstances that demanded before anything else a strong central government. The articles seemed to confer upon congress somewhat extensive powers; as a matter of fact they left it impotent. It was given ample power to make laws, but was left with no means of enforcing them. Executive power remained almost entirely in the hands of the states, so that congress was compelled to make requests like a suppliant instead of issuing commands like a sovereign. Its position was illogical and absurd. In its hands alone lay the treaty-making power; yet it could not guarantee to other nations concerned that its treaties would be observed, since it had no power of compelling the obedience of the states. It could appropriate money as freely as it saw fit for the purpose of defraying federal expenses; but it did not itself possess the taxing power, and it had no means of compelling the state legislatures to exercise it in its behalf. It could make requisition for troops; but the states might heed the requisition or not, as they pleased. It had no power of regulating foreign commerce, no power of settling interstate disputes except on appeal, no federal

judiciary. Moreover, with the cessation of the war the states lost interest in federal affairs and not infrequently failed to send delegates to the federal congress, making it thus still more difficult to secure the nine votes necessary to the passing of any important measure. Finally, these defects of the articles were beyond remedy, since amendment had been made practically impossible.

86. Framers not Unconscious of Defects. It can hardly be supposed that the framers of the articles were unconscious of these defects. Our country has never produced abler statesmen than those of the period under consideration. Franklin's plan of confederation, drafted a year earlier than the articles, had offered a far more practicable scheme of government. It had made congress representative, not of the states, but of the people of the United States, by apportioning representation according to population and giving each delegate one vote; it had given congress control of foreign commerce; and it had made amendment possible by vote of a majority of the state legislatures. Just why this plan was never adopted is not clear. Probably public opinion was not yet ripe for it; the sentiment in favor of union not yet strong enough to render its provisions acceptable. Probably, too, the articles provided as near an approach to a federal union as the feeling of the time permitted.

Library References. — Ashley, §§ 94–105; Macy, p. 38; Dawes, pp. 45–46; Fiske, pp. 213–217; Hinsdale, Chap. VI; Bryce, Vol. I, pp. 20–21; Curtis, Vol. I, Chaps. IV–XV; Channing, §§ 159–161, 165–178; Montgomery, pp. 209–214; Fiske, *Critical Period*, Chaps. II–V; Hart, Chap. V; Lalor, Article on *Articles of Confederation;* Bancroft, Vol. V, pp. 10–15, 199–208, Vol. VI, pp. 110–194; McMaster, Vol. I, pp. 130–136, 184–185, 200–210, 281–354; Schouler, Vol. I, pp. 14–18, 20–24; Wilson, §§ 865–868.

QUESTIONS ON THE TEXT

61. Describe the form of government that prevailed in this country during the revolutionary period. Mention its principal defects.

62. What was Franklin's plan for "confederation and perpetual union"?

63. What occasioned the delay in the ratification of the articles of confederation?

64. How did the government under the articles of confederation differ from the government under the present constitution?

65. Define confederacy.

66. What was the only department of government established by the articles of confederation? Why was the government established by the articles of confederation weak? How long did it endure?

67. Mention two important defects in the articles of confederation. If you have not already done so, carefully read the articles of confederation and the declaration of independence.

For the articles of confederation, see Appendix; also for the constitution of the United States.

CHAPTER VI

THE CONSTITUTION: ITS FORMATION AND ADOPTION

87. Condition of Affairs under the Articles of Confederation. The course of events from 1781 to 1787 gave indisputable proof of the impossibility of government under the articles. So long as the struggle with the mother country lasted, the states could not help seeing that their only safety lay in union; and they were following the dictates of the merest self-interest in sending to congress their ablest men and in granting to that body, however grudgingly, the necessary means for conducting the government. As the fierceness of the struggle abated, however, the necessity for union was no longer so keenly felt. State interests loomed larger and larger; federal interests dwindled. The most distinguished statesmen no longer sat in the federal legislature. Their talents were demanded at home for the solution of difficult problems of state government; so that the national legislature, given by the articles no means of providing for its own needs and left wholly dependent upon the good-will of the states, soon found itself deprived of even such power of persuading the states as it had possessed through the pressure of the war and the personal influence of its members.

88. Attitude of the States. Gradually the states, having withdrawn from the service of the federal government its best ability, assumed toward it, if not an attitude of actual defiance, at best one of distrust or indifference. More than

once, whether through indifference or a more active sentiment, they made it impossible for congress to proceed to business at the proper time by failing to send delegates from enough states to transact important business or to settle important questions. National appeals for money many of them simply disregarded, so that between 1782 and 1786 congress obtained only about one-sixth of the amount asked for. Threats of secession were heard from more than one quarter, and even overt acts of defiance were not unknown.

89. The Feeling Between the States was no better than that between the national government and the states. Questions of trade involved them in continual quarrels. New England sought to secure a virtual monopoly of the carrying trade by demanding the exclusion of British vessels, a demand to which the southern states would not accede. States without seaports were forced to pay tolls to their more fortunate neighbors through whose ports their goods were received. Interstate tariffs grew up wherever conditions favored them, and tariff wars provided a constant source of irritation. Between the east and the west, also, there was a clash of interests. The east desired commercial intercourse with Spain and the Spanish colonies, which that country was willing to grant in return for the surrender by the United States of the right to free navigation of the Mississippi, which now flowed for two hundred miles through Spanish territory; and a considerable portion of congress was willing to negotiate a treaty on this basis. To this surrender, however, the people of the west, particularly those of Kentucky and what is now Tennessee, were unalterably and vehemently opposed. Bitter discussion between east and west followed, and threats of secession were

heard on both sides; but the project was finally abandoned. Even within the states troubles were rife. Financial distress, which large issues of paper money had only intensified, was everywhere apparent, and was leading in some cases to armed rebellion on the part of the debtor class.

90. The General Government Helpless. Meantime the general government, compelled to stand helplessly by, alike incapable of relieving the internal distress of the states, of adjusting interstate disputes, or of extricating the nation from its difficulties, was regarded by foreign nations with scorn or indifference. It was not without justification that the French minister wrote in 1784 that there was no general government in the country; nor was it strange that the commission appointed that year to conclude treaties with foreign nations and consisting of men so able and persuasive as John Adams, Franklin, and Jefferson, should have been able to induce only one foreign country to enter into treaty relations with the confederation. By 1786 the feeling had become general that nothing short of a thorough-going revision and amendment of the articles of confederation could remedy the existing evils.

91. Suggestions for Amendment. The suggestion that the articles be amended was by no means new. In 1781, even before all the states had ratified them, it had been proposed that congress should be given power to raise revenue by levying import duties to the extent of five percent *ad valorem*. The proposition was discussed for a year, but was finally defeated by the refusal of Rhode Island to agree to the arrangement. In 1783 the project was revived and a similar proposition was made, but with more limitations upon congress, only to meet defeat again, this time at the hands of

New York. Two years later Massachusetts instructed her delegates in congress to propose a general revision of the articles; but nothing came of this suggestion, and the convention which finally met for that purpose in 1787 and ended by framing an entirely new constitution, originated in a different way.

92. Origin of the Constitutional Convention. The constitutional convention grew out of an attempt on the part of a few of the states to reach some sort of agreement in commercial matters. In 1785 a commission from Maryland and Virginia met at Alexandria for the purpose of adjusting, if possible, the differences between those states in regard to the navigation of the Potomac River and the Chesapeake Bay. Before the commission broke up the Virginia delegates proposed that a similar commission composed of delegates from all the states should meet at Annapolis for the purpose of discussing trade relations throughout the country. The proposition was favorably received, and the following year, 1786, occurred the Annapolis convention.

93. The Annapolis Convention. When the delegates assembled at the appointed time, it was found that representatives were present from five states only, though a few others were on the way. With so incomplete a representation of the confederation it was useless to attempt to proceed with the business for which the convention had been summoned, but such discussions as occurred revealed the existence of a general sentiment in favor of the revision of the articles of confederation. Accordingly, without awaiting the arrival of the tardy delegates, those present before adjourning passed a resolution recommending a convention of delegates from all the states "to devise such further pro-

visions as shall appear to them necessary to render the constitution of the federal government *adequate to the exigencies of the union.*" This resolution was transmitted to congress and to the state legislatures; but it was not until five states had already appointed delegates to the new convention that congress approved it and recommended its adoption by the states. Thereupon the rest of the states, with the exception of Rhode Island, promptly adopted the recommendation of congress and appointed their delegates.

94. The Constitutional Convention. The 14th of May, 1787, had been fixed upon as the day, and Philadelphia as the place of meeting for the new convention; but it was not until May 25 that delegates had arrived from a sufficient number of states to enable the convention to organize for its work, and two months more elapsed before all of the twelve states that finally sent delegates were represented. Rhode Island alone took no part in the convention. In that state the governor and the upper house of the legislature were in favor of sending delegates; but the assembly, made up largely of men without education and of narrow political views, who were moreover fearful of the effect of the convention upon their financial policy of wiping out all debts by means of paper money, refused to send representatives. The convention as finally constituted consisted of fifty-five members, among them the ablest and most distinguished statesmen of the time. Together they made up a body that has rarely been equalled in intelligence, ability, patriotism and political sagacity. As has nearly always happened in the case of political bodies chosen at critical junctures in our history, the convention was strongly representative of the wisely conservative element in the country. No true patriot

could have anything to fear in entrusting his political interests to such men as figured most prominently in the proceedings of the convention.

95. Influence of Washington. Easily foremost, of course, was Washington, president of the convention, cautious, sagacious, rich in experience, utterly free from local prejudice. His position as presiding officer naturally precluded his taking part in the debates; but it has been said of him that, through the power of his personality, he had the greatest influence on the total result of any man in the convention. Unquestionably the fact that he approved the constitution assisted in no small degree in securing for it the ratification of otherwise doubtful states.

96. Hamilton and Madison. Of those who engaged actively in the debates of the convention, the two most prominent and almost equally influential characters were Hamilton and Madison. In spite of the fact that they were young men (Hamilton was but thirty, and Madison six years older), both had already rendered political service as members of congress, and Hamilton had been one of the delegates to the Annapolis convention. Hamilton's keen insight into the principles of government, combined with a remarkable power of logical, straightforward reasoning, stood him in good stead in the debates of the convention. His greatest service in the work of that body was his successful insistence upon the absolute necessity of creating an efficient national government, even though it might involve a very considerable curtailment of the powers of the states. Madison was even more active, if not more influential, in the convention than his colleague. He was one of the few, destined finally to become the majority, who believed that no satis-

factory amendment of the articles of confederation was possible, and that the only thing to do was to throw them overboard and frame a new constitution. To this proposition it was objected, reasonably enough, that the assembly in acting upon it would be exceeding its authority, since it had been given power only to revise the articles of confederation; and in furnishing convincing answers to objections of this type he rendered most efficient service. It was Madison, also, who drafted the scheme of government known as the Virginia plan, which was to become the basis of the constitution as it was finally adopted. Nor did the work of these two young men end with the adjournment of the convention. Through the series of political essays known as The Federalist, written for the purpose of explaining and defending the constitution after it had been submitted to the people for ratification, they did yeoman's service in securing its adoption.

97. Franklin. Scarcely inferior in influence, though much less active in debate, was the venerable Franklin, now in his eighty-second year. For half a century he had had intimate knowledge of public affairs; for a quarter of a century he had represented his country or a portion of it at foreign capitals. Twice had he drafted a plan of union and a scheme of government for the colonies, neither of them, to be sure, destined to be put into operation — one the plan adopted by the Albany convention in 1754, but rejected by the colonies; the other the scheme considered by the continental congress a year before the articles of confederation were drafted, but never acted upon. It was his particular task in the convention to pour oil on the troubled waters. When the debate became too bitter or too personal, his

ready wit restored everybody to good humor, and more than once his tact prevented differences of opinion from becoming irreconcilable disputes.

98. Other Prominent Delegates present were George Mason and Edmund Randolph of Virginia; John Dickinson of Delaware; James Wilson, Robert and Gouverneur Morris of Pennsylvania, to the last of whom the constitution mainly owes the admirable clearness and simplicity of its language, which has made the work of interpretation so much easier and surer; Roger Sherman of Connecticut, who had been a member of nearly every congress; Elbridge Gerry of Massachusetts; Rufus King of New York, the author of the prohibition on the states to pass laws affecting the obligation of contracts; Paterson of New Jersey (afterwards governor, 1791–1793); and the two Pinckneys and John Rutledge of South Carolina. These were the most distinguished members of the assembly, but all were men of ability and experience. Of the fifty-five present, eighteen were at the same time members of congress; and there were only twelve who had not at some time sat in that body.

99. Work of the Convention. As we have already seen, the organization of the convention was delayed until May 25 by the lack of a quorum. Once organized, however, the work proceeded without interruption for four months, daily sessions being held until the 17th of September, when the engrossed copy was signed and the convention finally adjourned. The work throughout was carried on behind closed doors — wisely, since, had the questions under discussion been known, the pressure of public opinion upon the delegates would probably have made agreement impossible. It was not until long afterwards, when the very full notes

kept by Madison of the debates of the convention were printed, that the difficulties it had surmounted became known.

100. Difficulty of the Task. In some respects the task before the framers of the constitution was peculiarly difficult. "The establishment of a constitution in a time of profound peace, by the voluntary consent of a whole people, is a prodigy, to the completion of which I look forward with trembling anxiety," wrote Hamilton; and many of his contemporaries shared his feeling. In the first place there had been no overwhelming public sentiment in favor of the calling of the convention, nor was there any profound belief that it would accomplish anything. Then, too, within the convention itself there was a strong feeling that it had no power beyond that of revising the articles of confederation; and not a little argument was needed to induce the assembly to undertake the framing of a new constitution. That question once decided, the convention found itself face to face with a peculiar condition of affairs. Its task was not the comparatively simple one of devising a scheme of government for a single unitary state, in which the central government should be the source of power for all minor political divisions; nor had it on the other hand to deal with a simple confederation, in which the component states were still sovereign and independent with full power at any time to withdraw from the union. The course of events during the revolution had unquestionably established a nation with a life of its own, yet it had left the integrity of the states untouched. The states were still free political agents, however strongly public necessity might urge them to form a national union. "We were neither the same nation nor different

nations," said Gerry. In short, the task before the convention was that of framing a constitution for the first great federal state in history. Just how this was to be done no one saw clearly at the opening of the convention. Among the members of the assembly the most diverse opinions were held as to what should be the character of the new government. Not a few contended for the maintenance of the existing form of government with only such revision of the articles of confederation as experience had shown to be absolutely necessary, *i.e.*, they advocated, if not the extreme state rights doctrine, at least as great a degree of state sovereignty as was at all compatible with orderly government. A few, notably Hamilton, advocated the establishment of a strongly centralized national government, in which the states should be shorn of all their sovereign power. The majority, however, hoped for the establishment of a moderately strong central government, with enough curtailment of state prerogatives to render the general government thoroughly efficient.

101. Plans Submitted. The real work of the convention began on the 29th of May when Edmund Randolph of Virginia submitted a plan of government, principally the work of Madison, consisting of fifteen propositions, most of which were finally embodied in the constitution. This plan is known as the Virginia plan. On the same day (May 29th) Charles Pinckney of South Carolina presented another plan very similar in its provisions to that of the Virginia delegation but more detailed. This received little attention. The interest of the convention centred upon the Virginia plan and its principal opponent the New Jersey plan, introduced by Paterson of New Jersey, and

expressing the wishes of the smaller states. The Virginia plan provided for a government to consist of the three departments — executive, legislative, and judicial — the legislature to consist of two houses, the lower elected by the people, the upper by the lower from candidates nominated by the state legislatures. In both houses representation was to be based on free population. Congress was also to choose the executive and the judiciary. This plan unquestionably gave the control of affairs into the hands of the larger states, and it met with fierce opposition on the part of the smaller ones. They therefore agreed upon the series of resolutions introduced by Paterson. This plan proposed to continue the existing government but to give congress power to regulate commerce, to raise revenue, to establish a federal judiciary, and to coerce the states. While these plans were under discussion, Hamilton made a speech to the convention in the course of which he read a plan outlining a strongly centralized national government in which the states had little power. This has been called Hamilton's plan; but he knew, as he himself said, that it was very remote from the ideas of the people, and he probably intended only to outline more carefully his own views and the amendments he intended to offer at the proper time, rather than to submit a formal plan for the consideration of the convention.

102. The First Great Compromise. As the discussion of the two principal plans proceeded, it became evident that only a most liberal spirit of compromise could enable the convention to effect anything. Differences of opinion among the delegates were so wide as to be all but irreconcilable. More than once the convention seemed on the verge of dissolution, but each time some compromise was effected and

the work proceeded. The first great crisis came in the course of the discussion as to whether there should be a national or a federal government, and whether there should be equal representation of the states in congress or whether representation should be apportioned on the basis of population. Naturally the smaller states contended fiercely for equal representation. Finally one of the Connecticut delegates suggested a compromise, based on the system in use in the legislature of his own state, according to which there was to be equal representation of the states in the senate but representation apportioned on the basis of population in the house of representatives. To this the larger states agreed after some discussion, and thus the first great compromise of the constitution was effected.

103. The Second Great Compromise. This question as to the manner of representation in the two houses having been settled, another arose as to the apportionment of representatives in the lower house. The population of the southern states contained a large proportion of slaves possessed of no political rights. Ought they to be counted in determining the number of representatives from those states; and if counted for that purpose, ought they not to be counted also in apportioning direct taxes? Finally a compromise was effected upon this question also — the three-fifths compromise, as it is sometimes called — according to which five slaves were to be counted as equal to three white men, and direct taxes were to be apportioned in the same manner as representatives.

104. The Third Great Compromise also was made necessary by the existence of slavery and the slave trade. The real question at issue was whether or not the general gov-

ernment should be given control over commerce. The ill effects of allowing each state commercial independence had become evident under the articles of confederation, and the states engaged in general commerce desired its regulation by the general government. On the other hand, the states engaged in the slave trade, knowing the sentiment entertained against it at the north, feared that heavy losses might be entailed upon them by some prohibitory legislative act of the general government. A compromise was finally reached by which it was agreed that congress should be given control over commerce but should be forbidden to pass any act prohibiting the importation of slaves before 1808, though it might levy a tax of ten dollars each on all slaves imported. Of this last provision, however, congress never took advantage. It should not be supposed that these three were the only compromises of the constitution; it has been said of it indeed, that it was nothing but a series of compromises. These three, however, were of vital importance, since a failure to reach an agreement on any of these points would have resulted almost inevitably in the dissolution of the convention.

105. Ratification. In accordance with the last article of the new constitution providing for its ratification, it was submitted on the 20th of September, 1787, to congress, where it was subjected to criticism for eight days before it was sent to the state legislatures, to be by them in turn submitted to conventions chosen by the people of the several states. It was not until June 21, 1788, that the ratification of the nine states necessary to the establishment of the new government was secured. Thereupon congress made preparations for putting the constitution into opera-

tion; and the other states, finding themselves confronted with the alternative of joining the union or standing alone in the world, since the old government established by the articles of confederation had been annihilated, ratified one by one, Rhode Island holding out until the end of May, 1790.

106. Struggle over Ratification. Except in the smaller states, to which very considerable concessions had been made, ratification was nearly everywhere secured with difficulty. Had the matter been left to a direct vote of the people, taken all over the country on the same day, it is doubtful if it could have been secured at all. Fortunately, as Mr. Bryce has noted, "The conventions were composed of able men, who listened to thoughtful arguments, and were themselves influenced by the authority of their leaders." [1] Out of this struggle over ratification emerged the first two great political parties in the United States. The supporters of the constitution were called federalists; the opponents anti-federalists. The federalist party was in general the party of the moneyed classes — the public creditors, the merchants, the lawyers; the antifederalist the party of the debtor class, the advocates of paper money — in general the less wealthy portion of the community. The antifederalists objected among other things to the absence of a bill of rights in the new constitution; to the power of taxation given the national legislature; to the power granted to the federal judiciary; to the paying of congressmen out of the federal treasury, thus making them independent of the states; to the voting by individuals instead of by states in the national legislature; in short, to what they considered the too aristocratic, too centralized form of the new govern-

[1] Bryce, Vol. I, p. 27.

ment. On the other hand, the views of the federalist party found expression most ably and thoroughly through the series of remarkable political essays written by Hamilton, Madison, and Jay, and afterwards collected and published under the title of The Federalists. Their effectiveness in helping to secure ratification has been already mentioned. Other influences, too, were at work. The support of such tried and trusted men as Washington and Madison, the compromises made to different sections and interests, the example of other states — all had their effect upon doubtful states; but unquestionably the two most potent influences were the almost universal economic distress; and the dread of foreign powers, especially Spain and England, who were believed, perhaps not wholly without reason, to be only awaiting a favorable opportunity for absorbing the youthful nation.

107. Establishment of the New Government. As soon as the ratification of the necessary nine states was secured, congress passed an act providing for the establishment and organization of the new government. The first Wednesday in January, 1789, was designated as the day for appointing electors; the first Wednesday in February for assembling and voting for president; and the first Wednesday in March for "commencing the proceedings under the said constitution." It was not until April 1st, however, that a quorum was secured in the house of representatives and that body was organized; while in the senate a quorum was first present on April 6th. Thereupon the votes were counted and Washington was declared elected. Some further delay ensued, but finally on April 30 occurred the inauguration of Washington and the installation of the new government.

Library References. — Ashley, §§ 106–120; Macy, pp. 38–40; Hinsdale, pp. 82–116; Bryce, Vol. I, Chap. III; Fiske, pp. 217–219; Channing, pp. 254–262, 270–275; Montgomery, pp. 214–218; Curtis, Vol. I, Chaps. XV–XXXVI; Fiske, *Critical Period*, pp. 214–350; Roberts, Vol. II, pp. 446–447; Hart, Chap. VI; Lalor, Article on the *Constitutional Convention;* Bancroft, Vol. VI, Book II, Chap. VIII, Books III–IV, Book V, Chaps. II–III; Schouler, Vol. I, pp. 28–70; McMaster, Vol. I, pp. 390–399, 417–423, 436–502.

QUESTIONS ON THE TEXT

68. Describe the political conditions which made necessary the present constitution of the United States.

69. What evils was the United States constitution intended to remedy? Does it remedy those evils? Give reasons.

70. What state took the first step that led to the formation of the present constitution?

71. When and where was the constitution made? Name six objects stated in the preamble.

72. How was the constitution framed? Name the three great compromises of the constitution.

73. What differences of opinion existed between the framers of the constitution as to the powers of the federal government? What are these differences sometimes called?

74. What is meant by the statement: "The house of representatives represents the national idea; the senate represents the federal idea"?

75. State the provisions under which the constitution took effect.

76. The sessions of the constitutional convention were all executive, *i.e.*, the public was excluded from all meetings and the work of the convention kept secret until after final adjournment. Was this a wise thing to do? Why?

CHAPTER VII

THE CONSTITUTION: ITS ORIGIN AND NATURE

108. Its Origin. In regard to the originality of the constitution the most opposite views have been entertained. Mr. Gladstone's remark that it is "the most wonderful work ever struck off at a given time by the brain and purpose of man," has generally been construed, whether it was so intended or not, as an assertion of its originality. On the other hand, Sir Henry Maine says that it is "in reality a version of the British constitution" as it then was. Both these statements are misleading, though both contain an element of truth. As a matter of fact, the convention wisely based its work as little as possible upon untried theories, as much as possible upon experience. Only where colonial or state experience furnished no precedent did they risk an invention of their own. At the same time, there were in the situation before the convention some elements that were new, some problems for which the framers were compelled to devise new solutions. As for the British constitution, it unquestionably exercised a very considerable influence upon the framers of our constitution, but not directly, as Sir Henry Maine's remark implies. Rather, that influence came to them filtered, for the most part, through the channels of colonial, revolutionary or early national experience.

109. Origin of Special Provisions. Nothing could be truer than the oft quoted observation that nearly every pro-

vision of the federal constitution that has worked well is one borrowed from some one of the state constitutions, nearly every one that has worked badly is one that the convention in the absence of precedents was obliged to devise for itself. It is interesting to note the source of some of these provisions. The separation of the government into three clearly defined departments, each independent of the others, had been characteristic of the colonies and after them of the states, the separation having been carried much further in America than in England. This characteristic reappears in an even more extreme form in the federal constitution. The division of the legislature into two houses, which has often been pointed to as a direct copy of the English system, is rather a copy of the plan almost universally in use in the states, though it is true that in character the two houses of the federal legislature correspond much more closely to those of Great Britain. Even the names senate and house of representatives were in use in several of the states. The president also, in whom some writers have thought that they saw a copy of the British monarch, corresponds much more closely in character and function to the governors of the states, some of whom were called presidents. In several states, too, the office of vice-president existed. Some half-dozen or more of the states also provided a method of impeachment.

110. Suggestions from the States. Certain states can be pointed to more especially as furnishing the suggestions for particular provisions. We have already seen that the different basis of representation in the two houses was suggested by the constitution of Connecticut. The veto power of the chief executive is found also in the constitution of Massa-

chusetts; the constitution of Delaware provided for the election of one-third of the senators every two years; the constitution of New York made provision for a census every seven years for the purpose of apportioning representatives; in Massachusetts and New Hampshire all revenue bills originated in the house of representatives. As a whole, the plan devised for electing the president was original; but even here the idea of an electoral college was derived from Maryland. Perhaps the truest prototype for the supreme court is to be found, not in the states, but in the judicial committee of the privy council in Great Britain. In fact, in the provisions of the constitution there was little indeed that was new. Such originality as there was lay rather in the attempt to frame a written constitution for a federation, and in the idea of submitting it to the people for ratification. "The work of the convention was a work of selection, not a work of creation, and . . . the success of their work was not a success of invention, always most dangerous in government, but a success of judgment, of selective wisdom, of practical sagacity — the only sort of success in politics which can ever be made permanent." [1]

111. Its Nature Different from the British Constitution. The character of the government established by the new constitution was something different not only from the government of Great Britain, upon which it had been in many respects indirectly modelled, but from that of the confederation as well. It is doubtful if the framers themselves realized how widely their work diverged from the mass of charters, statutes and usages that made up the unwritten,

[1] Wilson, p. 475.

highly flexible constitution of Great Britain. Perhaps the cardinal difference lay in the widely different character of the two great legislative bodies, parliament and congress. It should be remembered that the British parliament is and was then an absolutely sovereign body. It may make or unmake any law, change the constitution or the form of government at will, interfere with any of the "unalienable" rights of the citizen, do any one of a thousand things that it never does do. None of its acts can be "unconstitutional," for there is no higher authority competent to pronounce them so. In legal theory it is the nation and possesses all of the nation's powers. The congress of the United States is no such sovereign body. Neither congress, nor the president, nor both together can move one step beyond the strict limits assigned them by the constitution. Their powers are carefully enumerated, and any acts done in excess of them are simply void. Sovereign power, such as belongs, theoretically at least, to the British parliament can be exercised in the United States only by the whole body of the people acting in the manner prescribed by the constitution.

112. Different from the Confederation. Between the new government and the old government of the confederation there were also some radical differences. The new constitution did more than merely strengthen the general government so as to render it efficient. It changed a confederation into a federation, a league of states into a national state. The central government operated no longer upon the states merely, but upon the individual citizen as well.

113. Growth of Nationality. To be sure, the constitution as it existed in 1789 is not exactly the constitution as it is to-day. It has been developed by amendment, first of all,

but even more by interpretation and by custom; and practically all such development has been in the direction of nationalization, of consolidation. It must be admitted that the federation of 1789 was much looser, much more like the old confederation, than is the union of to-day. The public sentiment of the time, which was for the most part indifferent or lukewarm toward the union and jealously watchful of the prerogatives of the states, demanded such an interpretation of the constitution as would impose upon the general government the strictest limitations compatible with efficiency. As time passed, however, and the nation expanded, bringing into the union new states with no memory of a time when the states were all and the union naught; as a network of railroads gradually spread over the country, bringing the people together and making them more homogeneous ; as war with other countries wakened a patriotism wider than state patriotism, and civil war finally swept away the last great barriers between sections — the sentiment of nationality slowly prevailed over local prejudices and attachments; and instead of the old jealousy and distrust of the general government on the part of the states, there grew up a realization of the fact that under the constitution state government and national government are mutually complementary, that neither usurps the functions of the other, that each is a necessary part of a single scheme.

114. Relation Between the States and the Union. The peculiar relation existing between the states and the national government is, perhaps, to the student of politics the most puzzling feature of our constitution. It will be remembered that under the articles of confederation the general government

was a government of delegated powers, these powers having been delegated by the states. Under the constitution the general government may still be said to be a government of delegated powers; but the source of authority is no longer the states but the people of the United States, though the people act through the state organization. Further we may say that, during the period of the confederation, the prevalent theory was that the union had been formed by a mere compact between the states, from which they retained the power of withdrawing at will. From the time of the adoption of the constitution to the civil war this theory struggled for supremacy against the opposing opinion that by the ratification of the constitution the states had become inseparable parts of the union, to which they had permanently surrendered their sovereignty. Practically, if not theoretically, this question was settled finally by the test of civil war; and since that struggle it is admitted that, whatever other powers the states may possess, they do not possess the power of withdrawing from the union (the right of secession). On the other hand, the states are not mere administrative divisions of the general government, nor are their powers delegated to them by the constitution. That instrument withholds from them certain powers; but such functions as they perform, they perform by an inherent, not a delegated authority. Within their own spheres they are completely independent, self-governing bodies. Their government "is subordinate only in the sense of being less than national in its jurisdiction."

115. Departments of Government. Besides this delicate adjustment of powers between state and national government so that both operate without friction even within

the same sphere, perhaps the most remarkable feature of our constitution is the strict separation of the three great functions or departments of government — the executive, the legislative and the judicial. By thus separating these three essential functions of government, making them independent and coördinate, and placing in the hands of each the means of defending itself against the encroachments of the other two, the framers of the constitution hoped to secure not only the rights of the individual citizen, but permanency for the form of government established. They tried to establish a complete system of "checks and balances," so that it would be impossible for any one department to overshadow the others and seize supreme power. For example, the executive power is vested in the president; but through his veto power he holds a very effective check upon the legislature, while his right of pardon gives him a share of judicial power also. Legislative power is vested in congress; but the house of representatives, through its control of the public purse, and the senate through its power of advice and consent in the matter of appointments and treaties, both act as checks upon the executive. Judicial power is vested in the supreme court and in such inferior courts as may be established; but through the power of the supreme court to pass upon the constitutionality of any law, the judicial department acts as a check upon the legislature. At the same time the greatest care was taken to make each department as independent as possible of the other two — in the case of the judiciary by making their tenure of office as secure as possible; in the case of the other two, by making them responsible, not to each other, but directly or indirectly to the people.

116. Stability of the Constitution. Contrary to the expectation of many at the time of its adoption, the constitution has proved itself extremely stable. The process of amendment provided by the instrument, while not so difficult as to be impracticable, as was the case with the articles of confederation, has nevertheless proved too cumbersome to be resorted to unadvisedly. As a result the constitution has been but little changed by amendment. Of the fifteen amendments that have been passed, the first ten, often called the bill of rights, were passed at one time and might almost be counted as one; while the last three also, relating as they do to the same subject and growing out of the civil war, are really a unit; so that it is perhaps not inaccurate to say that the constitution has really been amended but four times. It has undergone development, but it has been principally through the process of judicial interpretation and through custom. Mr. Bryce has said of it, "The constitution as a whole has stood and stands unshaken. The scales of power have continued to hang fairly even. The President has not corrupted and enslaved Congress; Congress has not paralyzed and cowed the President. . . . Neither the legislature nor the executive has for a moment threatened the liberties of the people. The States have not broken up the Union and the Union has not absorbed the States. No wonder that the Americans are proud of an instrument under which this great result has been attained, which has passed unscathed through the furnace of civil war, which has been found capable of embracing a body of commonwealths more than three times as numerous, and with twenty-fold the population of the original States, which has cultivated the political intelligence of the masses to a point

reached in no other country, which has fostered and been found compatible with a larger measure of local self-government than has existed elsewhere."

Library References. — Ashley, §§ 121–138; Harrison, Chap. I; Macy, Chaps. VI, XXXV; Dawes, pp. 46–59, 406–418; Bryce, Vol. I, Chaps. II–IV; Wilson, §§ 869–884; Hinsdale, Chaps. XII–XV; Madison, *Journal of Constitutional Convention; Federalist*; Johnston, pp. 12–14; Curtis, Vol. II, Chaps. I–II; Channing, pp. 259–270; Fiske, *American Political Ideas*, pp. 57–100; Wilson, *Congressional Government*, pp. 1–57; Hart, pp. 133–135; Lalor, Article on *Constitution of the United States;* Woodburn, pp. 58–93.

QUESTIONS ON THE TEXT

77. Mention two governmental institutions that are derived from England.

78. Compare the constitution of the United States with the English constitution as to (1) origin, (2) form, (3) susceptibility to change.

79. What provisions of the constitution were taken from the various state constitutions?

80. Mention one respect in which the constitution of the United States differs from that of England. Compare the powers of parliament and congress.

81. Distinguish between confederacy and nation. What kind of government was that of the continental congress?

82. Show how the constitution changed the relations "from a league of states into a national state."

83. Into what three departments are the powers of the United States government divided, and why is this division made?

84. What is the source of the powers (1) of the United States government, (2) of the state governments?

85. What was the ordinance of nullification? Of what doctrine was it an expression? How has this question been finally settled?

86. Give Mr. Gladstone's opinion of the constitution.

87. Give the substance of Mr. Bryce's statement regarding the working of the constitution.

CHAPTER VIII

LEGISLATIVE DEPARTMENT: ITS ORGANIZATION

117. The Two Houses. In the United States, legislative power is vested in a congress consisting of two houses, called the senate and the house of representatives, the first chosen in such a way as to make it representative of the states — *i.e.*, representative of the federal idea; the latter chosen in such a way as to make it representative of the people as a whole — *i.e.*, of the national idea. In the constitutional convention there was almost unanimous agreement that the new congress should consist of two houses. The failure of the old congress of the confederation with its single house, the much more satisfactory experience of the states with their bicameral systems, and — most of all, doubtless — the faith of the convention in the efficacy of a system of "checks and balances," all tended to secure unanimity on this point. It was intended that each house should act as a check upon the other, thus preventing over-hasty or ill-advised legislation. We have already seen whence the names senate and house of representatives were derived, and how it came about that the basis of representation in the two houses is different (§§ 102 and 109).

118. Number of Members. In size the two branches of the legislature differ greatly, though in neither is the number of members a fixed one. The house of representatives, sometimes called the lower house, often simply the house, is by far the more numerous. The constitution provides

that the number of representatives shall not exceed one for every thirty thousand of such population as is entitled to representation, though every state is to have at least one representative; and in order to apportion the representatives, provision was made for a decennial census, the first enumeration to be made within three years after the first meeting of congress. Until the first enumeration should be made, the constitution arbitrarily apportioned the representatives among the states, making the whole number sixty-five. So long as slavery existed, the population entitled to representation consisted of all free persons, including those bound to a term of service, and excluding untaxed Indians, together with three-fifths of the slaves. Since the passing of the XIVth amendment, it has consisted of the whole number of persons in each state except untaxed Indians. Since the meeting of the first congress the number of members in the house has been increased with the increase of population, though not in direct proportion. After every decennial census congress determines what shall be the whole number of representatives, and they are then apportioned among the states according to population. By act of congress approved January, 1901, to take effect March 4, 1903, the number of representatives was fixed at 386, which is in the ratio of one representative to about 200,000 of the population. In the first house the ratio was one for about every 61,000. The criticism is sometimes made that the house has become so large as to be unwieldy, but it is still small in comparison with the lower houses of the leading European legislatures. In England the corresponding body consists of 670 members; in France of 591; in Germany of 397. If a new state is admitted after an apportionment

act is passed, the new members are additional to those provided for by the act. Besides the regular representatives from the states, there are in the house also delegates from the territories, each organized territory being entitled to one. These delegates have the privilege of speaking on any question affecting their territories, but are allowed no vote. Since representation in the senate is based on the states and divided among all the states equally, each state being entitled to two senators, that body also increases in size with the admission of every new state. Composed at first of twenty-six members, it now numbers ninety.

119. The Suffrage. The members of the house of representatives are chosen directly by the people in each state. At the time of the constitutional convention the limitations upon the suffrage differed very considerably in the different states, and it seemed wisest to leave to the states the matter of deciding who should have the right to vote for representatives; consequently, it was provided that the electors (those possessing the right to vote) in each state should have the qualifications necessary for electors of the most numerous branch of the state legislature. By the passage of the XIVth and XVth amendments in 1868 and 1870, however, some restrictions were placed upon this unqualified right of the states to fix the limitations of the suffrage. By the XVth amendment they are forbidden to abridge the right to vote "on account of race, color, or previous condition of servitude;" while the XIVth brings strong pressure to bear in favor of manhood suffrage by providing for a reduction of the basis of representation in proportion as any state abridges the franchise of any male citizen twenty-one years of age except for participation in crime.

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In spite of these restrictions, however, it is possible for the electoral franchise by which the members of the national house of representatives are chosen, to differ widely in the different states. As a matter of fact, the differences are small. There is practically manhood suffrage everywhere, except for the disqualification in some states of paupers, illiterates and other defective or delinquent classes.

120. Qualifications of Representatives. The qualifications fixed by the constitution for members of the house of representatives are three: (1) the person chosen must be at least twenty-five years of age; (2) he must have been seven years a citizen of the United States; and (3) he must when elected be an inhabitant of the state from which he is chosen. But universal custom and, in some states, state law have placed a further restriction upon the choice by requiring the representative to be also a resident of the congressional district from which he is chosen. The advisability of this additional qualification has been questioned, especially by European critics of our political institutions. In Europe, where this local restriction does not generally exist, it has been found that representatives of one district elected from some other are not less well informed as to local needs or less zealous in behalf of their constituents than those chosen from their own districts. It is argued against the system that it tends to lower the general level of ability in the legislative body, on the one hand by returning men of inferior ability from some districts where there is little ability or where the best talent does not seek an outlet in politics; on the other by barring out men of superior ability in districts, such as those of the large cities in the older states, where such men are more numerous than the places to be filled.

In spite of criticism, however, there is a deeply rooted public sentiment in favor of the restriction. Besides the feeling of local pride, which forbids the supposition that a better candidate could be found outside the district than within it, and the less commendable desire to reward local political services with such offices, there is a profound belief that no one can understand local needs or be so zealous in behalf of local interests as one residing in the community represented.

121. Exclusion of Members-Elect. These are the only restrictions imposed upon the people in the choice of their representatives; but it does not necessarily follow that every representative chosen by a constituency will be seated in the national legislature. The house has more than once asserted its right to exclude members-elect for treason or other crime. During the civil war an act was passed requiring of persons elected to office a test oath that debarred great numbers; and congress has always maintained its right to exclude members-elect in case something in their character or careers is strongly condemned by public sentiment. It was on this principle that the house of representatives acted a few years ago in excluding Brigham H. Roberts of Utah as "a notorious, defiant, demoralizing, and audacious violator of State and Federal law relating to polygamy and its attendant crimes." [1]

122. Length of Term. While the term of a representative is fixed by the constitution at two years, reëlection is possible as often as may be pleasing to the constituents. As a matter of fact, however, it is not the general practice, except perhaps in some of the older eastern states, to return the same man term after term. In order to be even moder-

[1] Excluded Jan. 25, 1900.

ately sure of retaining his seat through two or three successive terms, a representative must usually be either a very adroit politician or an eminent party leader. The result is that a congressman's whole period of service in the house is not likely on the average to be more than four years; and that at each biennial election the composition of the house is greatly changed, about half the members being new men. This, it is urged on the one hand, is an advantage in a number of ways: rotation in office helps to keep our institutions democratic; the biennial elections tend to keep the people alive to the political questions of the day; the shortness of the term assists in preventing any extensive political jobbery; and the occurrence of an election in the middle of the president's term acts as a check upon him by giving the people, if they wish it, an opportunity to express disapproval of his policy by returning a house politically opposed to him. On the other hand, there is at least one unquestionable objection to the shortness of the term: it practically obliges the man who is ambitious for a political career to devote his best energy to the securing of his reelection rather than to the serious study of legislative problems. Mr. Bryce says of this: "No habit could more effectually discourage noble ambition or check the growth of a class of accomplished statesmen. There are few walks of life in which experience counts for more than it does in parlimentary politics. It is an education in itself, an education in which the quick-witted Western American would make rapid progress were he suffered to remain long enough at Washington. At present he is not suffered for . . . nearly one-half of each successive house consists of new men, while the old members are too much harassed by the trouble

of procuring their re-election to have time or motive for the serious study of political problems."

123. Elections. The times, places, and manner of holding elections for members of congress are left by the constitution to the state legislatures, though the right is reserved to congress to alter such regulations of the state legislatures at any time, "except as to the place of choosing senators." Since the adoption of the constitution, congress has thought best to fix the time for and define the manner of holding these elections. For the election of representatives the time prescribed is the first Tuesday after the first Monday in November of the even-numbered years. As to the manner of election the practice of the states at first varied, some electing their members by districts, others electing them on a common ticket for the whole state. This last method, often called election by general ticket or "at large," usually resulted in giving to the party that carried the state the whole number of representatives, though the defeated party might have been almost equal in numbers. Since 1842 the states have been required to elect representatives by districts only, though under certain conditions they are given permission to elect by general ticket. The division of the state into districts is left to the state legislatures.

124. Gerrymandering. This power of marking out the congressional districts has given the state legislatures a very important part in determining the composition of the house by means of the process known as "gerrymandering," nor have the restrictions placed upon the states greatly diminished that influence. The process of gerrymandering consists in laying out the districts in such a way as to secure for the political party making the division a majority in

as many districts as possible. Thus, where a district is in any case hopelessly lost to the gerrymandering party, district lines are manipulated in such a way as to throw into it as large a proportion of political opponents as possible; where a district is doubtful, it is strengthened by adding to it some town or section strongly favorable. In interpreting the act of 1872, by which it was required that the territory composing the district should be compact and contiguous, any territory has been regarded as contiguous that touches the district at a single point; and as a result some districts have been created quite as absurd in contour as that which first gave rise to the term "gerrymander."[1] In Missouri, in order to throw as great a number of negro voters as possible into a single district, one was created that measured along its windings a greater length than the state itself. Other absurd examples are the "shoe-string" district of Mississippi, 500 miles long by 40 broad; the "dumb-bell" district of Pennsylvania; and the "monkey-wrench" district of Iowa.

125. Representatives at Large. If, after a census, the number of representatives in any state has been increased and the legislature fails to redistrict the state before the next congressional election, the additional representatives are chosen on a general ticket and are known as "representatives at large."

[1] The name is said to have had its origin in an incident connected with the redistricting of Massachusetts by the republican legislature in 1811 while Elbridge Gerry was governor. In the redistribution one of the districts had assumed a somewhat lizard-like form. This was shown on a map hanging over the desk of the editor of an opposition paper. The painter, Gilbert Stuart, happening to observe the figure, promptly added head, wings and claws, remarking, "That will do for a salamander." "Better say a Gerrymander," replied the editor, and the word passed into the language.

126. Vacancies. In case a member wishes to resign for any reason, he does so by letter to the governor of his state. If a seat becomes vacant by the death, resignation or expulsion of a member, the governor issues a writ for a new election.

127. Election Expenses. There are always, of course, expenses connected with an election — some necessary official expenses, for clerks, polling booths, etc.; some perhaps not absolutely necessary yet regarded as quite legitimate; some entirely illegitimate. The official expenses are paid out of the public treasury. The total expense varies greatly from district to district. In some districts it is very small; in other warmly contested districts, especially in large cities, it mounts up into the thousands of dollars. It is certain that bribery is resorted to more or less frequently, but circumstances make proof of the offence so difficult that an election is not often contested on that ground. The power of deciding contested election cases rests with the house, which does not meet until a year after the election. Since such a contest is likely to drag over the greater part of the first session, there is a general disinclination to enter upon it, the shortness of the term making it seem hardly worth while.

128. The House: Officers. The first business before a new congress is naturally the business of organization and the election of officers. In the house these officers are speaker, clerk, sergeant-at-arms, doorkeeper, postmaster, and chaplain, only the first of whom is a member of the house. The term of the speaker expires with the congress that elected him; the other officers hold over until their successors are chosen. In the organization of a new house the clerk of the preceding one plays an important part. It is his busi-

ness to make up the roll of the new house from the certified returns of the states; and in doing this he is obliged to enroll all who hold regular certificates, even though a question of their validity has been raised. Thus, even those whose seats are contested take part in the organization of the house. Until the house elects a speaker, the clerk of the old house also acts as presiding officer, and is expected in his rulings to deal fairly with all concerned. In case, as sometimes happens, the election of a speaker is more than a formal ratification by the house of a choice made in the caucus of the majority party, this duty of presiding may make the clerk of the house for a time an important figure politically. The ordinary duties of the clerk are to keep a record of all questions of order that arise, to certify to the passage of bills, to keep an account of disbursements, to keep the house journal and take charge of its printing. The duties of the doorkeeper, postmaster, and chaplain are sufficiently indicated by their names. To the sergeant-at-arms is intrusted the task of keeping order in the house. He also acts as paymaster of the house, paying members and delegates their salaries and mileage. The speaker is the most important officer in the house. Indeed, he has been called "the second if not the first political figure in the United States." Since his special duties and powers will be described in another connection (§§ 209–211), it will suffice to say here that he performs in the house the usual duties of a presiding officer, appoints all committees including the regular standing committees, and acts as chairman when the house resolves itself into a "committee of the whole," *i.e.*, when it changes itself from a legislative to a deliberative assembly in order to consider particular questions before taking legislative action upon them.

129. Method of Choice. Nominally the officers of the house are chosen directly by the house; actually they have already been chosen before the house takes action in the matter. The real choice is made at a caucus of the majority party, where a list of the officers is agreed upon. When these nominations are made in the house, the party votes solidly for them and the election is, of course, assured. To be sure, the majority could, if it chose, reject the decision of the caucus; but it does not choose, so that the election by the house virtually amounts to a mere formal ratification of the choice made in the caucus.

130. The Senate: Its Origin and Character. Turning now to the senate, we find ourselves dealing with a body in some respects very different in character from the house of representatives. It is often supposed that the senate had its origin in the necessity for conciliating the small states. As we have already seen, this is an erroneous idea (§ 109). From the first there was practically unanimous agreement in the constitutional convention that the national legislature should consist of two houses. Some sort of senate we should have had in any case. When the necessity for conciliating the small states arose out of the question as to what should be the basis of representation in the national legislature, it did nothing but determine the *form* of the senate. It made it representative of the federal idea — the idea that this is a union of states, which is just as true and just as important as the national idea — the idea that the people of the United States collectively form a single nation, one and indivisible. Ever since the convention the provision of the constitution giving the states equal representation in the senate has found opponents. It is argued that it is not fair, not in keeping

with democratic institutions, that Nevada, for instance, with her 42,325 inhabitants should have as much legislative power in the senate as New York with her 7,268,012.[1] The criticism overlooks the fact that the framers of our constitution did not intend to form a simple democratic government for a consolidated state. They were building a federal state. Certainly, aside from the fact that for the framers of the constitution it was a practical necessity, the plan of equal representation of the states in the senate offers advantages. It gives a real justification for the division of the legislature into two houses by providing a distinctly different basis of representation, and it forms a link between the state and the national governments.

131. The Senate: Constitutional Provisions. The constitutional provisions determining the character and organization of the senate may be summed up very briefly. The significance of some of them will have to be considered more at length. According to the constitution the senate is to be composed of two senators from each state, chosen by the state legislature for a term of six years. Any person so chosen must have attained the age of thirty years; must have been for nine years a citizen of the United States; and must, when elected, be an inhabitant of the state from which he is chosen. It was provided that after the first election the senators were to be divided as equally as possible into three classes, the first to retain their seats for two years, the second for four, and the third for six, so that one-third of the senate might be chosen every second year. Vacancies occurring during the recess of the state legislature are temporarily filled by the executive of

[1] Census of 1900.

the state until the next meeting of the state legislature. The vice-president of the United States is to be president of the senate, but has no vote except in case of a tie. The senate is to elect also a president *pro tempore* and such other officers as it chooses. Every senator is to have a vote, *i.e.*, the vote in the senate is to be by individuals, not by states.

132. The Senate: Objects Aimed At. It is interesting to note how these provisions have determined the character of the senate, sometimes resulting as the framers of the constitution intended that they should, sometimes giving most unexpected results. Their main object was to create in the senate a dignified, conservative body possessed of practical experience and superior intellectual ability, which was to act as a check upon the "democratic recklessness" of the house on the one hand, and the "monarchical tendencies" of the executive on the other. It was hoped that the higher age qualification would result in sending to the senate men of wider information and greater stability of character than that ordinarily possessed by members of the house; while the indirect manner of election and the length of the term were intended to secure greater independence of action than was possible or desirable in the lower house. In order that it might be an effective check upon the executive, it was deemed necessary that the senate should be made to share to a certain extent executive power. Hence its comparatively small size. This, too, was the primary reason for the division of the senate into classes. One of its chief executive functions is to share in the management of foreign affairs, a function that can be satisfactorily performed only by a body possessing sufficient permanency to assure a certain continuity of

policy. By retiring only one-third of the senate every two years such permanency is secured. A "new house" is created every second year; a "new senate" never.

133. Election of Senators. Of those clauses of the constitution dealing with the senate, the one providing for a method of electing the senators is perhaps the most conspicuous failure. The constitution provided simply that they were to be elected by the state legislatures, the time and manner of holding such elections being left to the decision of the states, though the right was reserved to congress "to make or alter such regulations by law" at any time. Up to 1866 congress took no action in the matter. Then a federal law was passed providing the present uniform method of election. This requires that each house shall first vote separately for the election of a senator. If the choice of both houses does not fall upon the same person, they are to meet in joint session and take a *viva voce* vote, a majority of each house being present and a majority of the whole legislature being required for election. If there is still no election, the joint assembly must meet on each succeeding day and take at least one vote until a choice is made. These provisions have so often resulted in abuse of various kinds (the senatorial deadlock, the breaking of a quorum, etc.) that some agitation has arisen in favor of direct election of senators, and a number of the state legislatures have formally recorded their approval of the plan. Three times a resolution providing for an amendment to the constitution to procure this result has passed the house, but each time it has failed in the senate.

134. Objections to Election by State Legislatures. The objections urged against the election of United States sena-

tors by the state legislatures are by no means trifling. The tendency is unquestionably to carry the strife of national parties into the state legislatures and to make national party interests paramount there to the detriment of state interests. This method of election has been charged "with the deterioration of state legislatures, with the growth of machine rule, with the purchasability of Senatorships, and with the decline of the United States itself." Whether the constitutional amendment necessary in order to change to the method of popular election could ever be brought about, is very questionable. In any case it would be a matter of great difficulty. What seems to be happening is that the actual method of election is coming to be more or less direct, though it remains still nominally indirect.

135. Present Practice. As a matter of fact, the election of senators, though it is by no means actually direct election by the people, is already only nominally election by the legislature. The real choice is made in the caucus of the majority party in the state legislature before the legislature meets. It now frequently happens that party conventions in the various states nominate their candidates for senator, and these nominations are subsequently ratified by the party majority in the legislature. This brings the choice one degree nearer to the people than the present method, and might, if it became fixed and general, result in nearly direct election, provided the people were able through a good primary nominating system to control the nominations. Otherwise it would simply mean election through a clique of party bosses. Another method is illustrated by the practice of the state of Nebraska. In that state, voters when voting for members of the state legislature are permitted "to express by ballot

their preference for some person for the office of United States Senator. The votes cast for such candidates shall be canvassed and returned in the same manner as for State officers." If such a system as this should prevail, any party could propose a qualified candidate for senator and secure an expression of popular approval or disapproval throughout the state. Of course the legislature would not be bound by law to elect a candidate who might be indicated in this way as the people's choice; but the political power of any unmistakable expression of popular opinion is very great, and doubtless such an expression would soon come to be ratified in the state legislature.

136. The Senate: Its Officers. The officers of the senate except the president, are chosen by that body. They are president, president *pro tempore*, secretary, chief clerk, sergeant-at-arms, chaplain, postmaster, librarian, and doorkeeper. None of these except the president *pro tempore* is a member of the senate. As we have already seen (§ 131), the vice-president of the United States is *ex officio* president of the senate. He cannot vote except in case of a tie, nor does he appoint the committees; they are chosen by the senate. The president *pro tempore*, on the other hand, has a vote on any question, but cannot cast the deciding vote in case of a tie. The vice-president having taken the oath of office at his inauguration, takes up his duties as presiding officer on the first day of the session and administers the oath of office to the new senators.

137. Privileges of Members of Congress. The members of both houses are by the constitution granted certain privileges on the one hand and subjected to certain restrictions on the other. Except for treason, felony, or breach of the

peace they are privileged from arrest while attending sessions of the legislature or while going to or coming from such meetings; and they cannot be subjected to question outside the legislature for any speech or debate uttered there. The object of taking this extraordinary precaution to secure freedom of person and freedom of speech to a member of congress is, of course, to prevent his district from being actually deprived of its representation by means of a false charge against him, or practically deprived of it by muzzling his utterances. Besides thus securing them special privileges, the constitution provides that congressmen shall be paid for their services out of the federal treasury. The question as to whether salaries should be paid to the national legislators was warmly discussed in the constitutional convention. English practice was opposed to it; the practice of the states favored it. The convention followed the example set by the states,[1] partly in the belief that men of ability might thus be enabled to enter the public service who would otherwise be debarred by poverty; partly with a feeling that the salary might be a means of making positions in the national legislature attractive enough to compete with those of the state legislatures. The constitution left the amount of the salary to be determined by law, and it has been changed several times. Both senators and representatives receive $5,000 per year, with 20 cents per mile for travelling expenses to and from Washington, and $125 for stationery. The speaker of the house receives $8,000 per year and mileage; the president *pro tempore* the same, while acting as president of the senate.

[1] Bryce presents the arguments on the other side. See Vol. I, pp. 194–195 and note.

138. Disabilities. On the other hand, members of the federal legislature are disqualified for appointment to "any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased" during their term of service; and United States officials cannot become members of the national legislature and at the same time continue in office. The object of the first part of this provision was to remove a possible temptation on the part of members to create offices or increase the salaries attaching to already existing offices for the sake of profiting by them personally. The last part is another example of concession made to appease state jealousy, the states fearing that the admission of United States officials to seats in congress would give the national government undue influence over the states.

139. Sessions of Congress. The time fixed by the constitution for the meeting of congress is the first Monday in December. As we have already noted (§ 123), the elections for members of the house fall in November of the even-numbered years, but the house elected at that time does not meet until December of the following year. There are two sessions of each congress: the first or long session, beginning the first Monday in December a year after election and continuing usually until midsummer, though it would be possible for it to continue until December; and the second or short session, beginning likewise in December one year after the opening of the first session and continuing until the 4th of March following, when the congress expires. Thus it will be seen that one session of each congress is held after its successor has been elected, and that it is possible for the expiring congress to pass legislation of which the people have

already expressed disapproval by electing a house of a different political complexion. Bills may carry over from the long to the short session in the house and perish with the arrival of March 4th, but senate bills do not die by the passing of time. The daily sessions last usually from noon until four or six o'clock, but may be, and often are, prolonged until late at night, particularly toward the end of the session. *One congress* is two years in length and has two sessions.

140. Quorum. It is provided by the constitution that a majority of each house shall constitute a quorum, but a smaller number may adjourn from day to day and may compel the attendance of absent members. There has been some discussion as to whether "a majority of each house" means a majority of the whole number that might possibly be elected or a majority of those who are actually members — in other words, whether vacancies should be counted. The view has generally been held that they should not. In case there is no quorum, and fifteen members and the speaker are present, they may proceed to compel the attendance of absentees by closing the doors of the house, calling the roll, noting the absent members, and then by a majority vote of those present authorizing the sergeant-at-arms to arrest and bring into the house such members as have no sufficient excuse for absence.

141. Procedure. Each house is given the power of determining its own rules of procedure and of enforcing them by punishing disorderly members even to the extent of expelling them, but the concurrence of two-thirds of the house is necessary for expulsion. In order that the public may be kept informed of the proceedings of congress, each house is required to keep a journal and to publish it from time to time,

"excepting such parts as may in their judgment require secrecy." The debates, however, are published daily in the Congressional Record, not in the journal.

142. Adjournment. In the matter of adjournment the constitution provides that "Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting." This provision is designed to prevent the blocking of legislation by the adjournment of one of the houses. If the two houses can come to no agreement as to the time of adjournment, the president may adjourn them to such time as he deems proper.

143. Comparison with Congress of the Confederation. We have already noted the significance of some of the differences between the congress created by the articles of confederation and that created by the constitution. It may be well here to summarize briefly the chief differences in the organization of the two bodies.

(1) The congress of the confederation consisted of a single house; that created by the constitution consists of two houses.

(2) Under the confederation each state was entitled to representation through delegates ranging from two to seven in number; under the constitution members are apportioned according to population in the house; by states in the senate, two for each state.

(3) Under the confederation the terms of delegates were one year in length; under the constitution representatives serve two years, senators six.

(4) Under the confederation delegates were chosen from each state as the legislature of the state might direct; under

the constitution representatives are elected by the people, senators by the state legislatures.

(5) Under the confederation each state had but a single vote no matter what the number of delegates; under the constitution each senator and representative has his individual vote (*i.e.*, Ohio 23, New York 39, etc.).

(6) Under the confederation the salaries of delegates were paid by the states; under the constitution they are paid by the United States.

Library References. — Ashley, §§ 255–259, 264–269, 277–282; Macy, Chap. XXXIII, pp. 211–217; Macy, *First Lessons*, Chap. XVII; Dawes, Chap. II, pp. 119–127, 139–141; Bryce, Vol. I, Chaps. X, XII–XIII, XIX; Hinsdale, Chaps. XVII–XX, XXIII; Wilson, §§ 1054–1061, 1064–1073; *Federalist;* Madison, *Journal of Convention;* Fiske, pp. 220–228; Harrison, Chaps. II–III; Curtis, Vol. I, Chaps. XXII–XXIII, XXV; Wilson, *Congressional Government*, pp. 219–230; Dole, Chap. XII; Alton, Chaps. II–III, VIII; Lalor, Articles on *Gerrymander*, *Senate*, *House of Representatives;* Woodburn, pp. 196–210, 214–222, 230–231, 239–243, 246–255.

QUESTIONS ON THE TEXT

88. Describe the legislative department of the national government.

89. Why was it thought best to have congress consist of two houses? What are the advantages of two branches in congress?

90. Give in substance the provision of the constitution in reference to apportionment of representatives.

91. How is the number of members composing the house of representatives determined? State the number composing the present house. (See latest edition of Tribune or World Almanac.) When may this number be increased?

92. What state has the largest number of members in the house of representatives? Why?

93. How are members of the lower house elected?

94. State the qualifications required for membership in the house of representatives and explain the importance of two of these requirements.

95. How long is the term of office of a member of the house of representatives?

96. How are vacancies in the office of representative filled?

97. Define bribery.

98. Mention the principal duties of the speaker of the house of representatives.

99. State the basis of representation in (1) the senate; (2) the house of representatives. Why this difference?

100. State the conditions of eligibility to the office of senator.

101. Give with respect to a senator (1) length of term; (2) minimum age; (3) salary; (4) duties.

102. One-third of the members of the senate are chosen once in two years. Give reasons for the gradual change in membership.

103. Explain why the constitution provides that the term of a member of the house of representatives shall be shorter than the term of a senator.

104. How are senators elected? What is meant by a joint ballot in the legislature? Give the principal arguments for and against the election of senators by direct vote of the people.

105. State how the president *pro tempore* of the senate is chosen, and mention one duty.

106. How do the two houses of congress differ as to the way in which the presiding officer is chosen?

107. Under what circumstances are the presiding officers in congress entitled to vote?

108. Mention two privileges conferred by the constitution on senators and representatives in congress, and give a reason for each provision.

109. What privilege have members of congress as to arrest, and why is this privilege given them?

110. How often does congress meet?

111. Define quorum; majority; plurality; what is meant by the "49th Congress"?

112. In what respects did congress under the confederation differ from congress under the constitution?

CHAPTER IX

LEGISLATIVE DEPARTMENT: ITS POWERS AND LIMITATIONS

144. The Taxing Power. When the makers of our constitution in drafting the document came to assign powers to the congress for which they had provided, they dealt first with the powers of congress touching the matter of money, and they placed at the head of the list the power "to lay and collect taxes, duties, imposts, and excises." Experience under the articles of confederation had taught them the absolute necessity of placing the power of taxation in the hands of the central government, if it were to continue to exist. They had learned that no government can be in any true sense a government, that it cannot even continue to be, unless it has the power of securing the means for its own continuance. This power is to a government what the power of securing food is to an individual of the animal world. However highly endowed in other respects, if it lacks this, it must soon succumb. The power of taxation is the ultimate means through which government accomplishes the objects for which it exists. This the framers of the constitution recognized; for in clothing congress with this power they added that it was in order that it might "pay the debts and provide for the common defence and general welfare of the United States."

145. Taxes: Classification. What, then, are these "taxes, duties, imposts, and excises" that congress is empowered to

lay and collect? How do they differ from each other and how are they laid and collected? Tax is the general name for money demanded by government for public purposes from those under its authority. Duties, imposts, and excises are all taxes. Taxes are divided into two general classes — direct and indirect. A tax is direct when the burden of it is borne by the person from whom government demands it, *e.g.*, poll-taxes, taxes on land or property. Indirect taxes "are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another," *i.e.*, they are levied on goods before they reach the person who uses them and are ultimately paid by him as a part of the market price, not as a tax. Duties, imposts, and excises are indirect taxes. In other words, the indirect tax can be shifted, the direct cannot. At present in the United States direct taxes are levied only by state and municipal governments, the revenue for the general government being derived from indirect taxes only; but congress has at various times levied direct taxes. The reason for the discontinuance of direct taxation by the general government is that under present constitutional requirements it works injustice to some sections. Congress is forbidden by the constitution to lay any direct tax except in proportion to population. If, then, one state has twice as many inhabitants as another, it must pay twice as large a share of any direct tax that may be levied. That seems just at first sight; but as a matter of fact, the state that has twice as large a population as another, has in general more than twice as much wealth, with a corresponding greater ability to pay, so that the tax falls more heavily on the less densely populated state.

146. Indirect Taxes: Duties. It is, then, in indirect taxes that we are chiefly interested here. Duties (also called customs) are taxes laid upon goods exported or imported. The term "imposts" is by some writers restricted to duties upon imports, but the distinction is not generally made. Since congress is forbidden by the constitution to tax articles exported from any state, duties in the United States are always import duties. They are of two kinds — specific and *ad valorem*. Specific duties are fixed amounts of taxation laid upon the unit of measurement of the article taxed, *i.e.*, the duty is chargeable by quantity, weight, or number. An *ad valorem* duty is one levied at a certain rate percent on the value of the commodity taxed, *i.e.*, the duty is chargeable according to the value of the article. Sometimes both a specific and an *ad valorem* duty are levied upon the same article.

147. The Tariff. In order that duties may be imposed as it desires, the government sees to it that a list of goods with the duties to be paid on them is made out and placed in the hands of the proper officials. Such a list is called a tariff or a tariff schedule. The term "tariff" is applied also to the duties imposed according to such a list, *i.e.*, to the resulting revenue, as well as to a law regulating import duties. Tariff questions have played a very important part in the history of the United States, becoming at times the main point at issue between the two great political parties. Such questions arise out of differences of opinion as to what should be the purpose of government in imposing duties. When a duty is laid upon an imported article the importer simply increases the price of it sufficiently to indemnify himself for the amount paid to the govern-

ment.[1] Thus the price may be increased to such an extent that, if the article can be produced in this country at all, it will be cheaper to produce it here than to buy it abroad. In this way a new industry may be created, or an existing one that was in danger of being forced out of existence may be enabled to continue. This policy of creating or fostering home industries by means of the imposition of duties is known as the policy of protection, and those who believe that it is the duty of government to maintain such a policy are called protectionists. Their opponents, the so-called free-traders, do not generally insist upon a policy of absolute free trade. They admit that congress has the right to impose duties, but insist that they should be for the purpose of producing revenue only.

148. Excises. The other kind of taxes through which the government obtains revenue for its support, is the kind known as excises. These are taxes levied upon the consumption, sale or manufacture of commodities within the country. The revenue resulting from them is known as "internal revenue." Liquors and tobacco are the commodities most commonly subjected to this kind of taxation, but are by no means the only ones. When it became necessary, in order to pay the expenses of the Spanish-American war, for the government to secure additional revenue, the list of articles producing internal revenue was greatly increased. A tax was levied on bankers and brokers; on all sorts of proprietary articles (patent medicines, perfumes,

[1] In theory, a tariff for any purpose is added to the price of the goods to the consumer. In fact, however, competition between producers in the same country, advantages in transportation and the law of supply and demand, so modify the theory that in many cases the price to the consumer is equal to or less than the foreign price, and in some instances has been less than the tariff on the foreign commodity.

etc.); and on legal documents, such as bank checks, telegraph and telephone messages, express receipts, etc. These documentary taxes were like those imposed by the stamp act of 1765, and were collected by requiring that a stamp be affixed to the documents.

149. Collection of Taxes. Considerable expense attaches to the collection of these federal taxes. In order to collect the import duties, the government has designated certain places along the coasts and other boundaries to be used as "ports of entry." At these places custom-houses are established in charge of officials known as "collectors of customs," who, with their assistants called "inspectors," are charged with the duty of examining goods coming into the country, and assessing the duties upon them according to the existing tariff rates. At New York, the principal port of entry in the United States, nearly two thousand officers and clerks are employed in this work. Besides custom-house employees the government is obliged to keep in its service also a large number of special agents and revenue cutters to prevent "smuggling," as the illegal importation of dutiable commodities is called. The collection of excises is under the supervision of the "commissioner of internal revenue," who is the head of one of the bureaus of the treasury department. The country is divided into revenue districts, each district in charge of a collector, whose duty it is to see that the laws are enforced in his district.

150. The Power to Borrow. Next after the power of taxation the constitution places in the hands of congress the power "to borrow money on the credit of the United States." Under normal conditions every well-regulated government is able to provide the means for its support by the ordinary

methods of taxation; but emergencies, such as war, requiring suddenly increased expenditures, may arise, and the government must then obtain revenue either by additional taxation or by borrowing or by both. Of course all money borrowed by the government must ultimately be paid by taxation, so that the two are closely connected. Borrowing only shifts a part of the burden of taxation to a later date, to the shoulders of a later generation in most cases. The ordinary method employed by government for borrowing money is the sale of bonds. A government bond is the same in nature as a promissory note given by an individual when he borrows money. It is the government's promise to pay a certain sum at a certain time with interest. Sometimes they are made payable at the option of the government after a certain minimum number of years, but fall due within a certain maximum number. The United States government has borrowed money in other ways than by the sale of bonds. It has issued treasury notes. These were not really different in character from bonds, but they were generally smaller in denomination and ran for shorter periods. A third method was that employed by the government in the legal tender acts of civil war times. These acts really provided for a forced loan from the people. Congress authorized the issue of a large number of United States notes, which it declared legal tender, *i.e.*, they must be accepted in the payment of debt.

151. Money: Its History. Another important power vested in congress is the power of coining money and regulating its value and that of foreign coin. This is not the place to enter upon a detailed discussion of the origin and history of money. It will be sufficient to note that as soon as

trade begins to develop, men begin to feel the need for some convenient medium of exchange, *i.e.*, for some sort of money. Different substances have been used for this purpose among different peoples at various times; but metals, and particularly gold and silver, have been found most convenient and have been generally adopted. At first the mere bits of metal were used, their value being determined by weighing. Later they were wrought into some sort of form, and marked in some way to indicate their weight; in other words, they were coined; but this process, being at first in private hands, could give neither uniformity nor assurance of value. Thus governments began to assume this function of coinage, and the government stamp became a pledge of the value of the coin.

152. Power of Coinage. United States Money. At the time of the adoption of the constitution there was no uniform monetary system in the country, the money in circulation consisting of a variety of foreign coins — Spanish dollars, English shillings, etc.; and the need for uniformity had become obvious. This was secured by vesting in congress alone the power of coining money and regulating its value. The actual process of coining money is carried on by the government at its mints. Of these the first was established at Philadelphia in 1792, and this still remains the principal one. Since then mints have been established at San Francisco, New Orleans, Carson City, and Denver, though the last two are in reality only assay offices (places where the metal is tested to determine its purity), no money having ever been coined there. The coinage of money is under the direction of one of the bureaus of the treasury department known as the United States mint. The officer in charge of

this bureau is called the director of the mint. Gold, silver, nickel, and bronze are the metals used in coins. At present the gold coins issued from the mints of the United States are the double eagle, eagle, half eagle, and quarter eagle; the silver coins are the dollar, half dollar, quarter dollar, and dime; the minor coins are the nickel and one cent piece. The gold coins and the silver dollars have been declared legal tender for any amount, excepting when the contract stipulates otherwise; the smaller silver coins in sums not exceeding ten dollars; the other coins up to twenty-five cents. Besides its coins the United States also issues paper money. This is made at the bureau of printing and engraving, which, like the United States mint, is under the direction of the treasury department. The kinds of paper money now in circulation are United States notes, silver certificates, gold certificates, treasury notes of 1890, and national bank notes.

153. Counterfeiting. We have seen that the power of controlling the monetary system of the country was put into the hands of congress in order that the people might be able to count upon its uniformity and the value and genuineness of the money issued. To accomplish this fully it was necessary that another power should be granted to congress — namely, the power "to provide for the punishment of counterfeiting the securities and current coin of the United States." To counterfeit anything is "to make a copy of it without authority or right, and with a view to deceive or defraud by passing the copy as original or genuine." In the matter of money the law regards it as counterfeiting either (1) to manufacture, (2) to put into circulation, or (3) to have in possession with intent to circulate forged coins or securities of the United States. The forged coins may be of equal weight

and purity with those of the government; they are none the less counterfeit. By the term "securities of the United States" is meant the bonds, paper money, etc., mentioned above, together with postage and revenue stamps. So important is it that the genuineness of the nation's money should be beyond suspicion that the penalties provided for the offence of counterfeiting are extraordinarily heavy; and not only the general government but the several states have enacted laws for its punishment. It is also forbidden to counterfeit within the United States the coins, notes, bonds, etc., of foreign governments.

154. Power to Regulate Commerce. It will be remembered that one of the defects of the articles of confederation was that they left the control of commerce entirely in the hands of the separate states, with what unsatisfactory results we have already seen (§ 89). It will be remembered also that the constitutional convention itself grew out of the attempts made through the Alexandria and Annapolis conventions to solve these difficult commercial problems; and that it was only with the greatest reluctance that some of the states finally yielded to the general government the right to control their commercial relations with other states and with foreign nations. This right was finally yielded, however, and congress was given the power "to regulate commerce with foreign nations and among the several states, and with the Indian tribes." Commerce with the Indian tribes was a matter of considerably more importance in 1787 than it is now; and its regulation by the general government was a practical necessity, if frequent and more or less disastrous wars were to be avoided. Foreign and interstate commerce, on the other hand, have so increased in volume

and the questions involved have become so complex, that it would be now more than ever impossible to leave the control of them in the hands of the states.

155. Foreign Commerce. In accordance with the above mentioned provision congress has enacted a great variety of laws for the protection and facilitation of our commerce. When the matter of taxation was under discussion (§ 149), it was noted that for the purpose of collecting import duties, the government had designated certain places to be used as ports of entry and established custom-houses at such places. At these ports all vessels are obliged to "clear" and "enter." Before a vessel leaves port the master is required to show that all harbor duties have been paid and all regulations observed. Thereupon the collector of customs at that port issues a certificate called a "clearance," and the vessel is free to sail. Upon arrival in port, "entry" is accomplished by the master's reporting to the collector, presenting a statement of his cargo, and delivering the clearance received at his last port, if he has touched at an American port. Congress has also passed navigation laws defining the nationality of our ships (*i.e.*, determining what vessels shall be regarded as American), the manner of their registration, the privileges that shall be granted them, and the conditions under which foreign vessels may engage in the commerce of the country. Registration or registry is the process by which United States vessels secure the protection of this government in any part of the world. There is issued to the registered vessel by the government a document containing a general description of the vessel, and this is intended to serve as a means of identification and a certificate of protection. Only vessels owned by citizens of the United States

and built in this country are registered. Under the authority of this provision also congress has taken measures for the protection of shipping by building and maintaining lighthouses and buoys, providing life-saving stations, improving harbors, establishing quarantine regulations, requiring the employment of licensed pilots, making coast surveys, etc. Finally, it is by virtue of this provision that congress has undertaken to regulate immigration into the United States. Under existing immigration laws admission to the country is denied to the following classes of persons: the Chinese, convicts, insane persons, paupers and those liable to become paupers, polygamists, anarchists, persons afflicted with contagious diseases, and laborers under contract to perform labor or service in the United States, excepting persons engaged in the professions and skilled laborers employed in the establishment of new industries. The object of these restrictions is obviously to bar out those classes of persons who, for various reasons, would be likely to constitute an undesirable element in the population; namely, those who because of some mental, moral, or physical defect could hardly be expected to become desirable citizens and might even be dangerous; those who for economic reasons would be objectionable in the eyes of a large proportion of our own population; and those who, because of wide racial differences, could not be easily "Americanized."

156. Interstate Commerce. Not less important than its control over foreign commerce is the power granted to congress to regulate interstate commerce. In interstate commerce is included not only land traffic between the states but also coast trade and commerce upon navigable rivers. In its "river and harbor" bills, therefore, congress yearly makes

large appropriations in aid of interstate commerce. The most important piece of legislation in regulation of interstate commerce ever passed by congress was the interstate commerce act of 1887. This was intended to relieve the public of some of the evils that had grown up in connection with the development of the great railway systems of the country. When the numerous small competing lines had been consolidated into a few great systems controlling a very large proportion of all interstate commerce, combination between these systems for the purpose of raising freight[1] and passenger rates, or securing for themselves other unfair advantages, became comparatively easy. The interstate commerce act was an attempt to remedy such evils. Among other things it provided (1) that all rates should be reasonable; (2) that there should be no unfair discrimination between persons, corporations, or localities; (3) that equal facilities should be given to all connecting lines; (4) that the charge for a "short haul" should not be greater than for a "long haul" under similar conditions; (5) that there should be no "pooling"[2] agreements; and (6) that an interstate commerce commission should be created to supervise the administration of the law. The commission created in accordance with the act consists of five persons appointed by the president with the consent of the senate. It has power to investigate all cases brought before it, to take testimony, and to render decisions; but it

[1] See Montague, "The Rise and Progress of the Standard Oil Company." New York, 1903.

[2] "Pooling" is an arrangement whereby a number of roads turn their earnings into a common fund to be distributed among the companies concerned in certain proportions agreed upon beforehand, the object being to remove the temptation to cut rates. Sometimes the freight itself is divided among the roads in fixed proportions.

cannot enforce its decisions by the infliction of penalties. That can be done only by regular process of the courts; and since conviction is a difficult matter, the interstate commerce law has never been fully enforced. Nevertheless the commission has exercised great influence in lessening the evils that the law was intended to correct.

157. Anti-Trust Law. Another important legislative act for the regulation of interstate commerce is the federal anti-trust law of 1890, making illegal "any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations." A trust may be loosely defined as a combination of manufacturers in any particular line, organized for the purpose of securing greater economy in production and preventing some of the losses incident to competition. Those who form a trust ordinarily do so with the hope of being able to limit the output of the commodity and control prices, thus violating the common law principle which forbids any unreasonable restraint of trade. A majority of the states have therefore passed laws prohibiting such combinations so far as their operations affect trade within the states; while the federal anti-trust law attempts to secure like protection for commerce between the states and with foreign nations.

158. Bankruptcy Laws. The right of congress to establish "uniform laws on the subject of bankruptcies throughout the United States" may likewise be looked upon as a power given for the sake of enabling the government to afford more effective protection to interstate commerce. The power of congress to pass bankruptcy laws does not interfere with the retention of a similar power by the states; it

only limits the power of the states in this matter. State bankruptcy laws affect only contracts made within the state between citizens of the state. Moreover, during the existence of a national bankruptcy law, state laws that are in conflict with it in any particular, are suspended.

159. Piracy. Congress is also given by another clause of the constitution, the power "to define and punish piracies and felonies committed on the high seas and offences against the law of nations." Piracy, *i.e.*, robbery committed on the high seas or committed by descent upon the coasts from the sea, is a menace to commerce and must naturally be made punishable by the same authority whose duty it is to protect commerce. Felonies committed on the high seas and offences against the law of nations are very likely also to have to do with commerce; and must in any case be made punishable by the United States, since the law of nations recognizes only the government of the nation, not that of New York or Ohio.

160. Weights and Measures. The same clause of the constitution that gives congress power to coin money gives it authority also to "fix the standard of weights and measures." Though this is a matter of considerable importance to trade, it was not until 1875 that congress established a bureau of weights and measures, and not until 1901 that a law was enacted giving full effect to this grant of power by establishing a national standardizing bureau in the treasury department.

161. War Powers. We have seen how powerless congress was under the articles of confederation to prosecute a vigorous war. Fortunately, before they went into effect the revolution was already drawing to a close; and while they remained the fundamental law of the land the government

was not again called upon to face the emergency of war. The members of the constitutional convention, however, realized the danger and remedied the defect of the old government by granting to the new one ample military powers. Congress was given power:

(1) To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

(2) To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

(3) To provide and maintain a navy;

(4) To make rules for the government and regulation of the land and naval forces;

(5) To provide for calling forth the militia to execute the laws of the United States, suppress insurrections, and repel invasions;

(6) To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

In addition to these powers congress was given the right:

(7) To exercise exclusive legislation in all cases whatsoever over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

162. Declaration of War. When the constitutional convention came to discuss the question as to where the power to declare war should reside, they considered the plan usually followed by European nations of leaving that prerogative with the executive. The question was settled, however,

by their adopting what they felt to be the more republican as well as the safer principle of granting this important power to the representatives of the people. While a formal declaration of war is not a necessary preliminary to hostilities, it is usual for a nation to make such a declaration.

163. Armies. The power to declare war implies as a consequence the power to raise and support armies. Under ordinary circumstances congress raises armies by enlistment (voluntary enrollment), but in case of necessity it may raise them and has raised them by conscription or draft (forced enrollment). It rests with congress also to determine the size of the army and the term for which the men shall serve; to furnish the necessary supplies and equipment; to build fortifications, arsenals, barracks, hospitals, etc.; to provide schools for the instruction of officers and men; to do all that may be required in order to make the army efficient. It was thought best, however, in giving congress this power of raising and supporting armies, to impose an important restriction. It was provided that no appropriations for this purpose should run for a longer term than two years. This keeps the army strictly dependent upon the people for its existence and support and enables them to control the military policy of the country. As a matter of fact, these appropriations have generally been made annually.

164. The Regular Army. It has always been the policy of the United States to keep the standing army small and to rely upon the militia for defence in extraordinary emergencies — a policy dictated partly by fear of the possible power of the army, partly by the fact that our geographical position makes the maintenance of a great army unnecessary.

To European eyes [1] our standing army must seem absurdly small. Before 1898 the maximum limit was 27,000 enlisted men. By act of congress passed March 2, 1899, the president was empowered to increase the regular army to 65,000 for a term of two years; and in February, 1901, the new army law fixed the minimum number of men at 57,000 and the maximum at 100,000. The army is organized by dividing it into departments. The departments are made up of one or more brigades; the brigades of three regiments; the regiments, if infantry of twelve companies, if cavalry of twelve troops or companies, if artillery of fourteen companies or batteries. The maximum number of men in a company is one hundred. The president is *ex officio* commander-in-chief; but the actual operations of the army are directed by the lieutenant-general, the officer highest in command. The title of general is an honorary title. The department or the brigade is commanded by a brigadier-general, the regiment by a colonel aided by a lieutenant-colonel and a major, the company by a captain and first and second lieutenants. Non-commissioned officers are first sergeant, sergeant, and corporal.

165. The Militia. In addition to the regular army the defence of the country is provided for by means of the militia. As defined by congress this is made up of all able-bodied male citizens between the ages of eighteen and forty-five. It is partly organized and partly unorganized. The organized portion, known as the national guard, is regularly equipped, drilled, and officered; but this work is done by

[1] In 1903 the armies of Europe on a peace basis were: Germany, 601,411 men; France, 561,375; Italy, 226,528; Austria-Hungary, 288,834; Russia, 1,098,946; England, 237,622.

the states according to the discipline prescribed by congress, and the choice of all regimental officers of the militia is left to the several states. In case they are needed "to suppress insurrections or repel invasions" the president issues a call to the governors of the states, who thereupon furnish the necessary troops. They then become a part of the military force of the United States and are subject to the same discipline as the regular army. Five times the militia has been called out: during the whiskey rebellion, the war of 1812, the civil war, the Spanish war, and to suppress the Philippine insurrection.

166. The Navy. For many years before 1883 the United States navy, as compared with the navies of the old world, was very insignificant. Only for a short period during and immediately after the civil war was it maintained in anything like a state of efficiency. During the last quarter of a century, however, the rapid expansion of our commercial and political relations with distant parts of the world has resulted in the building up of a really efficient navy. The power granted congress to build and maintain a navy implies of course the power to do whatever may be necessary to make it efficient — to enroll seamen, construct vessels, establish navy-yards and docks, furnish supplies and munitions, and provide for the instruction of officers and men in schools or otherwise. In some states a naval militia has been organized. If called into service in time of war, they man vessels for the defence of the harbors, thus freeing the regular naval force for other duties. In the navy the offices of admiral[1] and vice-admiral correspond to that of general in the army, *i.e.*, are honorary titles; neither of these offices is permanently maintained. The office of rear-admiral cor-

[1] New International Encyclopedia, vol. I, p. 122.

responds to that of lieutenant-general in the army. The other officers are commodores, captains, commanders, lieutenant-commanders, lieutenants, lieutenants junior grade, ensigns, and naval cadets.

167. Military Law and Courts. To congress also is assigned the duty of making rules for the government and regulation of the land and naval forces. Accordingly there has been enacted a code called the "military law" prescribing tactics and arrangement of troops, classifying officers and men, regulating their pay, defining military and naval offences, and providing for their punishment by means of special tribunals called courts-martial (*i.e.*, military courts), whose jurisdiction and procedure it establishes.

168. Letters of Marque and Reprisal: Captures. It will be noticed that the same clause that gives congress power to declare war gives it also the power to "grant letters of marque and reprisal and make rules concerning captures on land and water." Letters of marque and reprisal are permits issued by the government of a state in time of war to vessels owned and officered by private persons, giving them the privilege of seizing the property of the enemy wherever found. Such vessels are called privateers and have in past wars wrought great injury to commerce. When our constitution was framed, the custom of granting letters of marque and reprisal was general; but in 1856 an agreement was entered into by most of the great European powers that privateering should be abolished. Neither Spain nor the United States was a party to this agreement, and at the breaking out of the Spanish-American war the question of permitting privateering came up. Our government decided to observe the agreement of 1856. Spain, on the other hand,

declared in favor of granting letters of marque and reprisal, though none was actually granted. It seems hardly likely that our government will ever again resort to this method of naval warfare. The rules laid down by congress in regard to captures are briefly as follows: captures on land are the property of the government; captures on the water are sold. If the captured vessel is superior or equal in rank to the vessel making the capture, the proceeds are divided among the victorious crew according to the pay of each; if the captured vessel is of inferior rank, half the proceeds go to the government, the rest to the crew.

169. Military Property. We have already seen that in providing and maintaining an efficient army and navy, congress has need of a very considerable amount of military property, such as forts, magazines, arsenals, dockyards, etc. Over all places purchased from the states for the purpose of erecting such structures or any other necessary buildings, congress is of necessity given the right to exercise exclusive legislation. No matter in what state they may be located, they are never subject to state law, except that the states usually reserve the right to serve civil and criminal writs on persons within the ceded territory.

170. Miscellaneous Powers: Naturalization. Besides the powers granted to congress in matters relating to money, commerce, and war, the constitution also confers upon it a number of other powers not easily capable of classification. One of these is the power "to establish a uniform rule of naturalization." Naturalization is the term applied to the process by which persons who have been citizens of one country become citizens of another. Before the adoption of the constitution each state made its own naturalization

laws without much regard to the rules existing in other states. The natural result was confusion, which was remedied by giving this power into the hands of the general government. Until the passage of the XIVth amendment to the constitution some question existed as to what constituted citizenship in the United States. That amendment settled the question by declaring that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." All other residents of the United States are *aliens*.

171. Naturalization Laws. Since the adoption of the constitution congress has passed several naturalization laws. The present law requires that the alien who desires to become a citizen must appear before a court of record at least two years before admission to citizenship and there declare on oath his intention to become a citizen and to renounce his allegiance to any other government. This declaration is then recorded and the applicant is furnished with a copy of the record. Two years later the applicant for citizenship must appear in open court, must furnish proof that he has resided continuously in the United States for five years, and in the state or territory where the court is held for at least one year, and that he has behaved as a man of good moral character. He must then take an oath to support the constitution of the United States and renounce allegiance to any foreign government. If he has held any foreign title or order of nobility, it must be renounced. These facts are then recorded and a certificate of naturalization is granted. The wife and minor children of a naturalized citizen become citizens through his naturalization. Minor children take the citizenship of their parents. Thus children born abroad

to citizens of the United States, either native born or naturalized, are American citizens. Naturalization is denied to Chinese.

172. Postal Service. Another of the miscellaneous powers belonging to congress is the power "to establish post-offices and post-roads." In granting this power the constitutional convention was simply continuing a power that had already been delegated to the general government by the articles of confederation. The postal service is, indeed, so obviously a matter that can be better managed by the general government than by the states that it is not surprising that it aroused little discussion. The members of the convention seem not to have foreseen, however, how vast and important an enterprise the postal system of the United States was to become. The Federalist, discussing this matter very briefly, says, as if half apologizing for troubling the general government with so unimportant a business: "Nothing which tends to facilitate the intercourse between the states can be deemed unworthy of the public care." We shall not, perhaps, be surprised at this attitude, if we remember that in 1790 there were in the United States only 75 post-offices and 1,875 miles of mail routes, and that the total postal revenue was only $37,935; while in 1902 there were nearly 76,215 post-offices, more than 507,540 miles of mail routes, and a revenue of $121,848,047. The United States does not attempt to make its postal system pay a profit, the policy having been for the last half-century and more to conduct it simply on an expense paying basis. As a matter of fact, during most of that period the annual expenditures have been greater than the revenue. Since 1870 there has been every year except two a deficit, that of 1901 amounting to nearly four

million dollars. The law defines as post-roads "all letter carrier routes in towns and cities, all railroads and canals, and all the waters of the United States during the time mail is carried thereon."

173. Copyrights and Patents. The power to issue copyrights and patents is another power given to congress, the purpose assigned in the constitution itself being, "to promote the progress of science and useful arts." Copyright may be defined as the grant by a government to the author of an intellectual production (book, painting, sculpture, design, photograph, musical composition, etc.) of the exclusive right for a limited time to multiply and dispose of copies of it. A person desiring to secure a copyright on such a production sends to the librarian of congress a printed copy of the title in case of a book or similar production, or a description in case of a painting, statue, etc. On or before the day of publication two printed copies of the book, etc., or a photograph of the painting, etc., must be sent to the same official. A fee of fifty cents must be paid the librarian of congress for recording the title or description, and an additional fifty cents for furnishing a copy of the record. A copyright runs for a period of twenty-eight years and is renewable for fourteen more. A patent is the grant by a government to the author of a new and useful invention of the sole right to make and sell it for a limited term. The inventor who desires a patent must, in his application to the commissioner of patents, declare under oath that he believes himself to be the real author of the invention; must file in the patent office a full description of the article, together with drawings and possibly a model; and must pay a fee of $15 on filing his application and an additional $20 if the

patent be allowed. A patent is issued for a term of seventeen years, and may be renewed for a term of seven years by the commissioner of patents or by act of congress, provided, however, that the inventor has not received an adequate money return.

174. The National Capital. By the same clause of the constitution which gave congress power to control all places purchased for the erection of forts, magazines, etc., power was also conferred upon it to "exercise exclusive legislation . . . over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of congress, become the seat of the government of the United States." The need for such a provision had been shown by an unpleasant experience suffered at Philadelphia by the congress of the confederacy at the hands of an unpaid portion of the Revolutionary troops in 1783. The failure of the state government to afford the protection asked for had made it clear that the federal legislature must be given the power to protect itself and the seat of the federal government from the possibility of a repetition of such insults. From 1785 to 1790 New York was the national capital. In 1790 the seat of government was transferred to Philadelphia, where it remained until 1800, when it was permanently located in the District of Columbia. This was a piece of territory, originally ten miles square, lying along the Potomac, which was ceded to the United States by the states of Maryland and Virginia to be used as the seat of the national government. About thirty square miles on the right bank of the river were afterward receded to Virginia.

175. The Government of the District is provided for entirely by the federal authorities, the people having no po-

litical rights. The executive officers are three commissioners, two of whom are appointed for three years by the president with the consent of the senate, and one detailed from the corps of engineers of the United States army by the president to serve during his pleasure. They have general charge of municipal affairs, providing for the policing of the District, fire protection, education, etc. All officers other than the three commissioners are appointed by the president. The commissioners have the power to recommend needed legislation, but congress is the legislative body of the District, and all bills relating to it are passed in the regular manner. Congress pays one-half the expenses for the government of the territory; the other half is met by taxation of the inhabitants. The judicial power of the District is vested in a supreme court consisting of six judges appointed by the president for life.

176. Government of Territories. Closely allied to this special power granted to congress to govern the territory in which is located the seat of the federal government, is the power granted it in another article of the constitution "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." It is from this provision that congress derives the authority to govern its territories. We have already seen (§ 81) that before the adoption of the constitution the vast tract of land known as the Northwest Territory, the different portions of which were claimed by several of the states, had been ceded by those states to the general government. Following these cessions the congress of the confederation passed the act known as the ordinance of 1787, providing a government for this vast public domain — an

act that has been called "the most important piece of general legislation of the confederation epoch." It is certain that congress under the articles of confederation had no power to pass such an ordinance, and many writers have declared it of no effect. It matters little now; for the first congress that assembled under the constitution, having been given the authority to pass such legislation, reënacted the ordinance, which has ever since furnished the model upon which the territories of the United States have been organized.

177. Organized and Unorganized Territories. The Spanish-American war, resulting as it did in the acquisition by the United States of a number of insular possessions, most of them containing a population very different in character from that of the states and other territories, has very considerably complicated the problems of territorial government. Previous to that war the territories were simply divided into two classes — organized and unorganized. In the organized territories, including Arizona, New Mexico, Oklahoma, and, since 1900, Hawaii and Porto Rico, the government conforms with slight variations to the following type. There are the three departments of government — the executive, the legislative, and the judicial. The executive department consists of a governor, appointed by the president with the consent of the senate for a term of four years; a secretary similarly appointed; a treasurer, an auditor, and usually a superintendent of public instruction, appointed by the governor. The governor is *ex officio* commander of the militia. He has a veto power over the acts of the legislature, but his veto may be overridden, except in Arizona, by a two-thirds vote of the

house. He makes annual reports to the president and sends a message to the territorial legislature. The legislature consists of two houses, a council and a house of representatives, elected for a term of two years by the voters of the territory, voting in districts. The sessions are biennial and limited to sixty days. The sphere of legislation in the territorial legislature is practically as wide as that of the state legislatures; but congress has the power to annul or modify any act, thus maintaining complete control over the internal affairs of the territory. The people of the territory send a delegate to congress, who has the privilege of debate but no vote. The judicial department consists of a supreme court of three or more judges appointed for a term of four years by the president with the advice and consent of the senate. In the unorganized territory, of which there are now only two — Alaska and Indian Territory — there is no legislature. Instead, the governor with the assistance of the judiciary or of a council, performs the necessary legislative functions. Congress has enacted a code of laws for each of the unorganized territories.

178. Territories : A New Classification. Since the Spanish-American war a decision of the supreme court has practically established a new classification for the territories. According to this decision there are (1) those constituting "a part of" the United States, and (2) those "belonging to" the United States. To the first class belong Alaska, Indian Territory, Arizona, New Mexico, and Oklahoma; to the second, Hawaii, Porto Rico, the Philippines, Guam, and the Samoan possessions of the United States. Hawaii and Porto Rico have been given organized territorial governments conforming in a general way, though not completely, to the

type existing in the organized territories constituting "a part of" the United States. The other territories "belonging to" the United States are variously governed by the military or naval authorities or by special commissions.

179. Power to Establish Courts. One other specific power the constitution intrusts to congress — namely, the power "to constitute tribunals inferior to the supreme court." In accordance with this grant of power, congress created by the judiciary act of 1789 the district courts and the circuit courts and defined their functions. In 1855 it established the court of claims, and in 1891 the circuit courts of appeals.[1]

180. The Elastic Clause. So far we have been dealing with specific powers granted to congress by the constitution. There remains to be considered a very important clause, often called the "elastic clause," conferring upon congress by a general grant of power the right to do whatever may be necessary and proper for carrying out the provisions of the constitution. The exact wording of the clause is as follows: Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof." It is out of the difference of opinion as to the interpretation of this clause that the two great schools of constitutional construction have arisen, the strict constructionists and the liberal constructionists, the defenders of the doctrine of state rights and the upholders of the opposing doctrine of implied powers. The first insist that the constitution, and in particular this clause of it,

[1] For a description of the character and functions of these courts, see §§ 281–287.

should be strictly and narrowly construed, so as to give congress power to pass only such laws as are absolutely necessary in order to make effective the powers expressly granted. The liberal constructionists, on the other hand, maintain that by the phrase "laws which shall be necessary and proper" is meant, not only such as are indispensable to the exercise of the powers granted congress, but all such as are in any way conducive to their complete execution. The decisions of the supreme court, when that body has been called upon to settle constitutional questions arising under this clause, have in general been made on the principle of liberal construction.

181. Special Powers of Each House. We come now to the consideration of certain special powers granted to each of the two houses of congress, but not to congress as a whole. We have seen that each house is given the power of controlling its own organization and members; but there is given to each in addition certain important governmental powers. The special powers possessed by the house of representatives are three in number — the power to initiate all bills for raising revenue, the power of impeachment, and the power of electing the president in case no choice is made by the electors. The special powers of the senate are (1) the power to ratify treaties and to confirm presidential appointments, and (2) the power to act as a court of impeachment.

182. The House: Revenue Bills. Doubtless the convention in intrusting only to the house of representatives this power of initiating revenue bills was largely influenced by the practice of England, where for several centuries that power had resided in the house of commons. It was felt that the house, being renewed at frequent intervals by pop-

ular election and thus standing more closely in touch with the people than could the senate, ought to be given control of the power of taxing the people. But the convention was influenced also by a less theoretical reason. The larger states, fearful that they might be unfairly taxed if the senate were given equal powers with the house in this matter, demanded this provision as a protection and also as a compensation for having yielded to the senate the right to ratify treaties and to try impeachments. By the same clause, however, the senate is given the power to propose or concur with amendments to revenue bills, a power of which it avails itself so freely, that most money bills, whether for raising revenue or expending it, are finally passed only by means of conference and compromise between the two houses. There is no constitutional provision that appropriation bills (bills for the expenditure of money) should originate in the house, but as a matter of custom the important general appropriation bills do originate there.

183. The House: Impeachment. In placing the power of impeachment (bringing charges of official misconduct against an official) solely in the hands of the house of representatives the convention was again borrowing indirectly from English practice through the state constitutions. According to the constitution the persons who may be impeached are the president, the vice-president, and all civil officers of the United States, the term civil officers being used here in distinction from military and naval officers, who are subject to military law and whose offences are tried by courts-martial. Since offending senators and representatives may be expelled by a two-thirds vote of their respective houses, it has been deemed unnecessary to impeach them. The offences

for which officers may be impeached are "treason, bribery, or other high crimes and misdemeanors;" but the exact meaning of the last phrase has never been accurately determined. Since the adoption of the constitution there have been seven impeachment trials and two convictions.

184. The House: Presidential Election. The election of the president by the house of representatives has occurred twice — in the case of Jefferson in 1801, and of John Quincy Adams in 1825. In assigning this power to the house of representatives the convention, mindful of the fact that large executive powers (the confirmation of presidential appointments and the ratification of treaties) had been given to the senate, felt that that body should have no voice in the appointment of the executive.

185. The Senate: Executive Powers. Of the special powers of the senate, the two just mentioned — the ratification of treaties and the confirmation of appointments — are executive in their nature; the third — the power to act as a court of impeachment — is judicial. Though the senate was created as a part of the federal legislature, it was at first looked upon principally as an executive body. Hamilton in The Federalist [1] speaks of the executive power as divided between the president and the senate; and the senate for the first five years of its existence conducted itself as an executive body, holding its sessions until 1794 in secret. The senators looked upon themselves to a great extent as ambassadors from the states, and the president and cabinet officers sometimes consulted in person with the senate. Not until after the creation of its standing committees in 1816 did it become in legislation coördinate with the house. At

[1] *The Federalist*, Nos. 64–66.

present we think of the senate as primarily a legislative body; but it may at any moment turn itself into an executive body by going into "executive session." This it does when the subject under discussion is the confirmation of appointments or the ratification of treaties. As a matter of fact, though the penalty for disclosing what goes on behind the closed doors of the senate is expulsion, it has been found very difficult to maintain secrecy, particularly in the matter of the confirmation of appointments. For this reason there has been some agitation in favor of abandoning the "secret" session.

186. The Senate: Working of these Powers. It was the purpose of the convention in giving these powers into the hands of the senate to impose a check upon the power of the president. This it certainly does to some extent, though it is questioned whether the imposition of this check has operated entirely in the interests of good government. The participation of the senate in the treaty-making power, reducing as it does the difficulties always experienced by popular governments in dealing with foreign affairs, has generally been approved by critics of our political arrangements, though even here the requirement of a two-thirds vote for ratification has been criticised as giving too much power into the hands of a troublesome minority. Such a minority, intent upon party or local rather than national interests, may find it possible to postpone indefinitely or prevent altogether the settlement of important foreign affairs. The value of the other executive function intrusted to the senate — the power of confirming presidential appointments — is in general more seriously questioned. It is asserted that the arrangement does not in practice prevent abuses of the presi-

dent's appointing power; that if the president and the majority in the senate are of the same party, the appointments are arranged between them and the real object of the provision is defeated; that if they are of opposite parties, the senate confirms the worst appointments in order to subject the president to hostile criticism in the next political campaign.

187. The Senate: Judicial Function. The only judicial function of the senate is to act as a court for the trial of impeachment cases. The method of procedure is as follows. The charges against the officer impeached are preferred, as we have already seen, by the house of representatives, which prepares articles of impeachment, corresponding to the indictment in ordinary criminal trials. The house then chooses by ballot a number of "managers" to conduct the case before the senate. The senate organizes for this purpose by putting its members under oath to conduct the trial impartially. If the president is being tried, the chief justice acts as presiding officer; in other cases, the president or president *pro tempore* of the senate. A two-thirds vote of the members is required for conviction, the object being to prevent the use of impeachment for party purposes. The accused may appear in person or through counsel, witnesses are examined, evidence taken, and the senate then deliberates in secret session. In case of conviction the only punishment that the senate has power to impose is removal from office and disqualification for further official service under the United States; but the officer is still liable to trial before the ordinary courts, if he has committed any crime. During the trial the accused may continue his regular duties. In case of conviction the president cannot exercise his pardoning power. This power of trying impeachment cases was

not granted to the senate by the convention without objections, but the objections then urged have proved groundless.

188. Limitations upon Congress: Taxation. So far we have been dealing with the powers granted to congress as a whole and with the special powers granted to the separate houses. We come now to some limitations imposed upon congress by the constitution — the things which congress may *not do*. The restrictions laid upon congress in the matter of taxation are two: (1) it may lay no capitation or other direct tax except in proportion to the census; (2) it may lay no tax or duty on exports. We have already noted that the general government does not at present levy any direct tax. If it should do so, however, it is required to levy it in proportion to population, *i.e.*, the amount of revenue to be collected by the tax must be determined, and this must then be apportioned among the states according to population.[1] The prohibition laid upon congress in the matter of taxing exports was a practical necessity. The extent of the country and the variety of its resources make it, and made it even in 1787, practically impossible to lay such a tax without working injustice and hardship somewhere. There was, nevertheless, in the convention, considerable difference of opinion on this point, not a few holding that the government would be incomplete without a power to tax exports as well as imports.

189. Commerce. Appropriations. The restrictions imposed upon congress in the matter of commerce relate to the slave-trade and to interstate matters. The provision in regard to the slave-trade was the result of one of the com-

[1] The supreme court has decided that an income tax is a tax upon the property from which the income is derived and is therefore a direct tax and unconstitutional, since it is not levied in the manner prescribed by the constitution.

promises of the constitution already noted elsewhere (§ 104). It will be remembered that in the convention the delegates from the slave-holding and slave-trading states objected to giving congress complete control over commerce, lest the economic interests of their states might suffer by a too sudden abolition of the slave-trade. The debate resulted finally in the concession to congress by the slave states of full ultimate control of commerce in return for a continuance of the slave-trade for a limited period, congress being prohibited from forbidding the traffic prior to the year 1808. In regard to interstate affairs, congress is forbidden to make any regulation that shall give a preference to the ports of one state over those of another, or that shall oblige vessels bound to or from one state to enter, clear, or pay duties in another. Congress is also prohibited from drawing money from the treasury, "but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

190. Other Restrictions: Habeas Corpus. A few other restrictions are laid upon congress with the purpose of securing to the citizens of the United States personal liberty and equality. These are the provisions in regard to the suspension of the writ of habeas corpus, in regard to bills of attainder and *ex post facto* laws, in regard to titles of nobility, etc. The constitution provides that "The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." The writ of habeas corpus is "a guarantee of personal liberty as old as Magna Charta." It is a writ granted by a court requiring a prisoner to be brought before

the court in order that the legality of his detention may be investigated, and that he may be at once liberated if illegally detained. The question as to where the right to suspend the writ is lodged was left unsettled by the constitution. By judicial decision it has been given to congress, but that body may grant the right to the president. In the few cases where the writ has been suspended — namely, during the civil war — the power was exercised by the president.

191. Bills of Attainder: Ex Post Facto Laws. The passing of bills of attainder and *ex post facto* laws is absolutely forbidden by the constitution. Bills of attainder are special legislative acts inflicting capital punishment for high offences such as treason, without a judicial trial. If the punishment inflicted is less than death, the bill is properly a "bill of pains and penalties" rather than attainder. The *ex post facto* law is defined by Chief Justice Marshall as "one which renders an act punishable in a manner in which it was not punishable when committed." English jurists have held that the term applies only to criminal not to civil law, and the United States supreme court has taken the same position; but from the discussion that took place in the convention concerning this point, it would seem that the framers of the constitution meant by *ex post facto* laws all that are retroactive.

192. Titles of Nobility. Finally, "No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of congress, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state." At the time of the adoption of the constitution and even much later there existed a general feeling of an-

tagonism to titles. They were regarded as inseparable from aristocratic and monarchical forms of government, and Hamilton called their prohibition the corner-stone of republicanism. The last part of the provision was inserted to preserve foreign ministers and United States officers from the danger of bribery by foreign governments.

Library References. — Ashley, §§ 272–275, 292–297, 301–325, 396–398; Macy, Chaps. XXVI–XXVII, XXXVIII, XL; Macy, *First Lessons*, Chaps. XVI–XVII; Dawes, Chaps. III, XV, pp. 129–130, 146–148; Hinsdale, Chaps. XXI–XXII, XXV–XXVI, pp. 330–333; Fiske, pp. 228–229, 254–257, 263–268; Bryce, Vol I, Chaps. XI, XVI–XVII, XLVII; Wilson, §§ 1047–1052, 1084; Harrison, pp. 58–67; Curtis, Vol. I, Chaps. XXVI–XXVII; Wilson, *Congressional Government*, Chap. III, pp. 230–241, 275–277; Clow, Chap. III; Dole, pp. 69–71, Chap. XVI; Alton, Chaps. XXIV, XXIX; Lalor, Article on *Powers of Congress;* Woodburn, pp. 158–172, 177–182, 211–213, 231–239, 255–257, 305–310, Chap. VIII.

QUESTIONS ON THE TEXT

113. Why are the general powers of congress enumerated in the federal constitution, while similar powers of state legislatures are not specified in state constitutions?

114. State five powers of congress.

115. Mention three important powers vested exclusively in the house of representatives and give the reason in each case.

116. Has the senate any executive power? Discuss fully.

117. State three purposes for which the government may properly levy taxes.

118. Define taxes. Mention two kinds of taxes and discuss the justice of each.

119. Distinguish between direct and indirect taxes.

120. What are the sources of the revenue of the general government? Does the United States government levy any direct tax at the present time? State in substance the constitutional provision regarding the apportionment of direct taxes among the several states.

121. What are duties? State the manner in which duties are collected. What limitation is there to the powers of congress to levy duties? Give the reason for this limitation.

122. Distinguish between *ad valorem* and specific duties. Define tariff; reciprocity.

123. What is an excise duty? On what articles are excise duties now laid?

124. Should congress be given the power to regulate commerce? Give reasons for your answer.

125. Define ports of entry. Give the name of one United States port of entry on the Atlantic coast, and one on the Pacific coast.

126. Show the importance of the power possessed by congress to borrow money on the credit of the United States.

127. To what extent is immigration now restricted? What is the object of the restrictions?

128. Show the necessity of the power possessed by congress to regulate interstate commerce.

129. Define bankrupt law. Why is a bankrupt law desirable?

130. Define piracy. Show the importance of the power possessed by congress to define and punish felonies committed on the high seas.

131. Why is the power to declare war vested in congress alone?

132. Define letters of marque; privateer. What name is given to property captured in time of war? What disposition is made of such property?

133. What is naturalization? Describe the process by which it is secured in this state. Is the process uniform in all the states?

134. Define alien; citizen. What differences exist in the duties, rights and privileges of aliens, naturalized citizens and natural-born citizens?

135. What classes of foreigners are refused citizenship in the United States? Why?

136. On what ground has the United States claimed the right to interfere when railway traffic has been interrupted by strikes?

137. What is a copyright and how is it obtained? State for how long a time it is issued. State its purpose. May it be renewed?

138. What is a patent? For how long a term is a patent issued? How may it be renewed? What is the purpose of granting patents?

139. Mention the chief peculiarity in the government of the District of Columbia. Explain the importance of congressional control over the District of Columbia.

140. In what body is the government of a territory vested? What representation has a territory in congress?

141. What is the restriction in the constitution regarding the origin of revenue bills? What is the object of this restriction?

142. Define impeachment. What officers of the United States are subject to impeachment?

143. Mention (1) two powers of the senate not possessed by the house of representatives; (2) one power of the house not possessed by the senate.

144. What is meant by executive session? Which body of congress holds executive sessions? Mention two purposes for which executive sessions are held. On what ground is its abolition advocated?

145. Define treaty. Show the importance of the power of the senate to ratify or reject treaties made by the president.

146. Show the importance of the power of the senate to reject nominations made by the president.

147. In whom is vested the power to try cases of impeachment? Give an account of the national court for the trial of impeachments as to jurisdiction and method of procedure.

148. Mention five restrictions imposed on congress by the constitution.

149. What application of the constitutional provision regarding the apportionment of direct taxes was recently made by the supreme court in regard to the income tax law?

150. Give the provision of the constitution in regard to (1) privilege of the writ of habeas corpus, (2) bills for raising revenue, (3) drawing of money from the treasury.

151. Define appropriation. Show the importance to the people of the constitutional provision regarding appropriations.

152. Define writ of habeas corpus. Explain the importance of this writ as a protection to the right of personal liberty.

153. Define bill of attainder.

154. What is an *ex post facto* law? Are there any such laws in the United States? Give a reason for your answer.

155. What is meant by a title of nobility? Why does the constitution forbid congress to grant such a title?

156. Is an income tax a direct tax under the constitution? State your authority.

CHAPTER X

LEGISLATIVE DEPARTMENT: ITS WORKING

193. The Senate-chamber. The work of the national legislature is carried on in different parts of the capitol, the senate-chamber occupying a part of the north wing, the chamber of the house of representatives the south. The room occupied by the senate, naturally much the smaller of the two, is rectangular in form, the seats being arranged semicircularly facing the chair of the presiding officer, which occupies a raised marble dais at the end of the room. The seats are arm-chairs, each with its desk. Around the four sides of the room run galleries, one of which is reserved for the president of the United States. The open space back of the senators' chairs is furnished with sofas, and into this senators may bring visitors. The bare aspect of the walls, unbroken by windows, for the room is lighted from above, is somewhat relieved by a few pictures. The democratic senators occupy the right side of the room, the republicans the left; but because of the semicircular arrangement of the seats they face the chair, not each other.

194. Chamber of the House. The chamber occupied by the house is much larger, so large indeed as to make speaking there a difficult task. Like the senate-chamber, it is lighted from above and supplied with huge galleries running round all four sides and capable of seating 2,500 people. As in the senate, the seats of the members, revolving chairs and desks, are arranged in concentric rows about the speak-

er's marble chair on its raised platform. Below and in front of the speaker rests the mace, and here too are seated the clerks and official stenographers, with the sergeant-at-arms to the right. As in the senate-chamber, there is an open space furnished with sofas back of the members' seats, to which certain visitors are admitted.

195. Character of Members. In the character of their members the two houses show a somewhat marked difference, the senate containing a considerably larger proportion of men of superior intellectual capacity, political experience, and personal dignity. The great majority of the senators are successful lawyers, many of whom still practise before the supreme court; and there are many ex-governors, ex-representatives, ex-state judges, and ex-state legislators. In the senate of the 58th congress there were 20 ex-governors, 4 ex-judges, and 33 ex-representatives. This means, that we have in the senate a body of men possessed already of considerable political training, whose political efficiency is sure to be increased by the training they will get as senators. This is not to say that the senate is made up of men different in kind from those in the house. Like the representatives, the senators are for the most part active politicians, who have made their way by means of the ordinary political methods; but the senate, because it confers on its members more power and greater dignity, a longer term of service and a more independent position, has proved more attractive to men of ability and ambition and has been able to draw to itself the ablest of those who have chosen a political career. In the house, as in the senate, lawyers are numerous, though they are for the most part not leaders in their profession. The rest are recruited from the ranks of

the manufacturers, agriculturists, bankers, and journalists. Great railroad men, like great lawyers, are rare, and for the same reason. The attractions of a career in the house are not sufficient to overcome those of a successful practice at the bar or of a great railway business. Unlike the senate, the house of representatives has few very wealthy members, though few are very poor. Taking the house as a whole, it is not made up of men of the highest culture or the widest information, though there is no lack of character, shrewdness, and keen, if limited, intelligence. If they lack breadth of view, it is due to lack of opportunity rather than to natural incapacity.

196. Methods of Legislation. So much for the men by whom the work of national legislation is conducted. Let us now see something of the methods in use in the making of laws. All laws enacted by the national legislature make their first appearance in that body in the form of *bills*. A bill is simply a form or draft of a proposed law, and may be very radically changed before it is finally enacted. The constitution provides for three ways in which a bill, once introduced into the legislature, may become a law. (1) It may be passed by a majority of both houses and signed by the president. This is the normal way. (2) It may, however, after passing both houses, meet with the disapproval of the president. Thereupon it is returned without his signature to the house in which it originated, his objections are entered upon the journal, the bill is reconsidered, and may be repassed by a two-thirds vote of both houses, the vote being taken by yeas and nays. It then becomes a law without the president's signature. (3) It may be passed by a majority of both houses and sent to the president, who may neglect to return it within ten days, Sundays excepted. In

that case, also, it becomes a law without the president's signature, unless congress adjourns in the meantime. The constitution does not, however, attempt to lay down rules as to the means by which congress shall accomplish the work intrusted to it. That body having been created, and its powers and limitations clearly defined, it is left to work out its own salvation and evolve its own methods. As the field of legislation has grown wider and more complicated with the growth of the nation, the methods of dealing with it have also grown more complex, so that we cannot hope here to follow them in detail. We must be content if we can understand clearly the more important features of our system of legislation.

197. Stages of a House Bill.[1] In order that a bill may be enacted into law it must pass through the following stages. First, it must be introduced. If it is introduced in the house, this is done by handing it to the speaker or laying it on his desk, in case it is a public bill; or by handing it to the clerk of the house, in case it is a private bill. When reached in the order of business, the bill is read for the first time by title only and is then referred by the speaker to its proper committee. In the committee the bill comes up for discussion, after which the committee may decide either not to report it at all, to report it so late in the session that no

[1] In the senate the method of procedure is as follows: Each morning the presiding officer of the senate calls for the presentation of bills, resolutions, and petitions, and the senators, each as he may secure recognition, present such bills as they may desire. In presenting a petition the senator states briefly its purport and asks its reference to the appropriate committee. When a bill is offered, it is carried by a page to the clerk's desk, the title is read and an appropriate reference ordered by the presiding officer, unless the senate, by a vote, itself directs the reference.

action can be taken upon it, to report it adversely, or to report it favorably. If the bill is dropped in committee it is, of course, "killed" without actually reaching the house at all. If it is reported adversely by the committee, it is generally dropped by the house without debate, so that in general only those bills that are reported favorably by the committees are actually considered by the house. When reported, it is read a second time, this time in full, and is then placed on the calendar. This does not necessarily mean that it will come up at some definite time for further consideration. It may never get farther than the calendar, its fate depending less upon its importance than upon the skill and energy of the member who has it in charge. If a bill succeeds in reaching a third reading it is read by title only, unless a reading in full is demanded. The question is then put, "Shall the bill pass?" and the debate follows. When the "previous question" is called for, the debate is closed by the member reporting the bill, and the vote is taken. If the bill passes the house, it is signed by the speaker and the clerk and is then taken to the senate. Here it is at once referred by the presiding officer to its appropriate committee, after which it passes through practically the same stages as in the house. If it passes the senate unamended, it goes to the president for his signature; but either house has the power of amending the bills of the other, and an amended bill must be returned to the house in which it originated and the amendment must be accepted before it can be regarded as passed by the two houses. In case either house refuses to accept an amendment of the other, the bill fails to become a law; or a conference committee is appointed, consisting of members from the senate and house committees

concerned with the bill, and a compromise may be agreed upon. The different methods of disposing of bills that have passed both houses of the legislature have already been considered (§ 196).

198. The Committee System. The process of legislation thus described seems comparatively simple; as a matter of fact there is much here requiring explanation and comment. Let us look first at the committee system. It is almost inevitable when a great nation like our own vests its law-making power in a representative body, that that body, if it is truly representative, should attain very considerable size. One of the most difficult problems of representative government is this one of getting large assemblies to perform the work of legislation promptly and efficiently. Two plans for solving the problem have been worked out. One is the plan of having the majority party in the legislative body appoint a small committee of leaders to draft the necessary measures, which are then adopted and intrusted to this group of leaders for execution. These leaders are held responsible. If their measures meet with the approval of the people, they can count on retaining the support of the majority in the representative body. If not, the opposing minority will become a majority and a new group of leaders will be substituted. This is in brief the English plan of solving the problem, the cabinet or ministerial system of government. The other is the plan of dividing the legislative body up into a number of small groups, each with its own field of action and each independent of the rest, the legislative body as a whole having the power either to adopt or reject the suggestions of the groups in regard to the matters intrusted to them. This is the congressional plan of

government, the committee system, by which our legislature accomplishes its work.

199. The Committees.[1] It is impossible here to review the history of the committee system in the United States, interesting though it is. A description of it as it exists and works at present must suffice. There are now in the house of representatives 48 regular committees, and 10 select committees, each constituting what Senator Hoar has called a "little legislature," so far as the management of its own particular business is concerned. In addition to these the house may at any time create select committees for special purposes, such as the conference committee, mentioned above, for the purpose of conferring with a like committee from the senate. The house may also at any time go into "committee of the whole," *i.e.*, the house may resolve itself into a committee, in order to debate more freely some measure then pending. When this is done the speaker calls some other member to the chair and the special rules of the house are suspended. By far the greatest part of the work of congress is done in the regular standing committees, which are appointed by the speaker at the beginning of each new congress, and to which all bills are referred. Among the most important of the standing committees of the house are the committees on rules, on ways and means, on appropriations, elections, banking and currency, accounts, rivers and harbors, judiciary, foreign affairs, and military affairs. In the senate there are 32 standing committees and 12 select committees. There are also three joint standing committees. In the senate, it will be remembered, the committees are selected, not by the presiding officer, but by the senate itself. The

[1] Encyclopedia Americana, Vol. V, Article on the *Congress of the United States*.

most important of the senate committees are those on finance, on appropriations, foreign affairs, privileges and elections, judiciary, and commerce. It is by no means always certain to what committee a bill should be referred, and this may become a matter of considerable importance to the fate of the bill, since, of two possible committees, one may be favorable, the other hostile. The disposition to be made of petitions, memorials, and private bills is indicated on them when they are handed to the clerk by the members introducing them. Other bills are regularly referred to their proper committees by the speaker, but his action may be changed in three ways: (1) by unanimous vote of the house; (2) on motion of the committee claiming jurisdiction; (3) on the report of the committee to which the bill has been referred. If a dispute arises as to the reference of the bill, it is settled by vote of the house.

200. Power of the Committee. When a bill has once been referred, the power of the committee over it is rarely questioned. Committee meetings for the consideration of bills are usually secret, and the public has no means of knowing how individual committee members have voted or what influences have been brought to bear on the committee. Open meetings for taking evidence on the bill and for hearing the arguments of its advocates and opponents are often held; but, unless the measure is one in which public interest is already excited, the newspapers rarely report the proceedings. Nominally the powers of the committee are limited to the consideration of bills submitted to it, *i.e.*, it has no right to initiate bills of its own; but it may and does amend as freely as it chooses the bills submitted, frequently transforming them completely. Moreover, if it desires

legislation on a subject concerning which no bill has been introduced, it can readily procure the introduction of the necessary measure. We have already seen that the committee may practically "kill" a measure by reporting it adversely, by reporting it too late in the session, or by not reporting it at all; and by the employment of one or the other of these methods the vast majority of the bills introduced meet an early death. In the long session of the 56th congress there were introduced into both houses 12,152 bills of which only 1,215 were enacted into law, *i.e.*, about nine-tenths of the measures introduced failed to pass. The house may, if it suspects a committee of "smothering" a bill that public sentiment favors, order the committee to report it, or it may transfer the bill to another committee; but these restraints upon the power of the committee are rarely applied.

201. Reporting Bills. Even after the rigid sifting to which the measures introduced are subjected by the committees, there remains a great number of bills to be reported, and the house can afford but a very limited time for hearing and discussing the report of each committee. With the exception of a few privileged committees — such as the one on rules, the one on ways and means, and the one on appropriations, which may report at any time — each committee is allowed on the average about two hours for making its report for the whole session. This allows an extremely limited time for debate, and the result is that the house is practically forced to adopt the recommendations of the committees in order to accomplish anything at all. The member reporting the measure, usually the chairman of the committee, has the privilege of opening and closing the de-

bate. He is allotted an hour in which to explain and defend his measure. He seldom, however, uses the whole of his time, but "yields the floor" for brief speeches to other members, both friends and opponents of the bill, previously agreed upon. He thus virtually controls the debate. At the end of the allotted period he moves that the report be accepted and at the same time "moves the previous question." This cuts off further amendment and debate, and the bill is voted upon.

202. Log-Rolling. While it is doubtful whether there is ordinarily any great amount of unmitigated bribery practised in securing legislation, the milder form of political "jobbery" known as "log-rolling" is not infrequently resorted to. This device is used both while the bill is still in the hands of the committee and after it is reported to the house in case there is any danger of its meeting with real opposition on the floor. It is a bargain struck between members, each of whom has "an axe to grind." "You help me with my measure and I'll help you with yours," is the arrangement; and thus votes enough are secured in the committee or friends enough on the floor of the house to pass a measure that would otherwise be rejected.

203. Filibustering. In spite of "log-rolling" and similar devices, however, the course of legislation does not always run so smoothly as the description given above might lead one to suppose. It has happened not infrequently that the opponents of a measure, while not numerous enough to prevent its passage if it were allowed to come to a vote, are still strong enough to obstruct business and prevent its being voted upon, with the object of extorting a compromise from the supporters of the measure. This process is known as

"filibustering." It consists in the making of all sorts of motions that can delay the business in hand — motions to adjourn, motions to take a recess, and calling for the yeas and nays on either of these questions. The last is an extremely effective and annoying means of obstructing business; first, because it consumes so much time, and second, because it is permitted by a rule that the house cannot alter, resting as it does on an express provision of the constitution.

204. Methods of Voting. In order to understand these tactics clearly we must know something of the methods of voting employed by the house. Ordinarily in taking the vote on a question the presiding officer simply calls in turn for the "ayes" and "noes," and judges by the volume of sound as to whether it has been carried or lost. If, however, a doubt exists, a division is taken in one of three ways: either (1) those in favor and those opposed rise successively and are counted by the speaker; or, (2) if he is still in doubt or if a count is called for by one-fifth of those present, the speaker appoints two tellers, who stand in the middle gangway and count, as the members pass between them, first those who vote in the affirmative and then those who vote in the negative; or, (3) if the yeas and nays are demanded by one-fifth of those present, that method is adopted. The clerk calls the roll of the house, each member who votes answering aye or no to his name. This usually consumes an hour or more. The roll is then called a second time in order to give those an opportunity to vote who did not vote on the first call, or to allow others to change their votes. Since the constitution provides that the yeas and nays must be taken on *any* question — questions of adjournment as well as questions of substance — at the demand of one-fifth of

those present, it is easy to see how potent a means of obstruction this may be made.

205. Restraint of Filibustering. Of late the house has adopted somewhat stringent rules to prevent filibustering, rules as stringent, perhaps, as are at all necessary. It should be remembered that it is a method that can be used successfully only by a large minority, fertile in expedients; and that the minority party will rarely combine for this purpose except on important questions. Moreover, if the question is one in which public interest has been awakened, the party that employs such obstructive tactics renders itself liable to popular disapproval, a risk that it is rarely willing to take. Since, in extreme cases, the device of "filibustering" may be used as a safeguard against the abuse of the system of closure of debate by means of the "previous question," perhaps it would not be wise to prevent its employment altogether, even if that were possible.

206. Closure of Debate. In a legislative body so large as the house of representatives, it is necessary that every possible means of expediting business be employed. We have already seen that one such means is found in the adoption by the house with little serious question of the recommendations of the committees. Another is the system of closure of debate just mentioned. The debate is usually closed by "moving the previous question" in the form, "Shall the main question now be put?" If this is ordered (and the motion for the previous question cannot itself be debated) the house must at once proceed to a vote on the main question. Any member may move this closure of debate without permission from the speaker, and it may be passed by a bare majority of those present. In the senate no rule of closure

exists, the small size of the body and its sense of its own dignity both operating to make such a rule less necessary than in the house.

207. Advantages and Disadvantages of the Committee System. In the foregoing discussion of the committee system it has already been suggested that it possesses both advantages and disadvantages. These may now be pointed out more definitely. Its chief advantages are:

(1) It kills off worthless bills at an early stage of their existence, thus preventing waste of time on the part of the house.

(2) Through it the house can accomplish vastly more legislation than would be otherwise possible, though it runs the risk of accepting the bad work of its committees as well as the good.

(3) It promotes specialization in legislative work. Under it each leader in the house may be assigned the work for which he is specially fitted, and every subject of legislation may be put into the hands of those members who know most about it.

(4) It makes it possible for congress to subject the administrative departments to investigation at any time. The committee cannot punish the departments for maladministration, but it can make public the condition of affairs and subject them to public censure.

(5) It makes possible coöperation between the executive and the legislative departments. Cabinet members cannot urge their measures on the floor of the house, but they may do so before the committees.

On the other hand the following disadvantages of the system have been cited: (1) It breaks up the unity of the

house; (2) it cramps debate; (3) it lessens the harmony of legislation; (4) it facilitates corruption; (5) it reduces responsibility; (6) it dissipates the ability of the house into independent groups; and (7) it lowers the interest of the nation in the proceedings of congress.[1] How the evils of our committee system are to be remedied while its advantages are retained is one of the problems of practical politics for American citizens.

208. The Speaker. One more striking feature of our legislative system is the power over legislation intrusted to the speaker of the house of representatives. One writer calls him "the second, if not the first, political figure in the United States;" while another says of him that he is "the most interesting and important legislative officer in the American Commonwealth, if not in the world." We borrowed our speaker from the English house of commons, but we have radically changed his character. The English speaker, no matter what his political affiliations or his standing in his party before election, must immediately on election forget his party and become simply a fair and judicial presiding officer. The American speaker, on the other hand, is, and is expected to remain, a party leader, using his office for party purposes. This does not mean that he is privileged to use unfair means for furthering party projects or that he may wrest the rules of the house from their obvious meaning in order to secure a party advantage; but he may make the fullest possible use of any means that his office legitimately places in his hands for furthering the interests of his party.

209. Sources of His Power : Appointment of Committees. His power over legislation is given him in three ways: (1)

[1] Woodburn, pp. 284 *seq.*

through his power of appointing committees; (2) through his power of granting or withholding recognition to a member desiring to address the house; (3) through his position as chairman of the committee on rules. We have already seen that in addition to his power of appointing all the house committees with their chairman, the speaker has also the right to appoint the chairman of the committee of the whole. If we bear in mind how nearly absolute is the power of these committees over legislation, we can gain some idea of the immense influence exercised by the man who can practically make them what he chooses. In making up his committees he is bound to consider sectional and party interests as well as his own personal obligations; but beyond that he works with a free hand. He may secure or prevent legislation upon certain subjects and may direct it along such lines as he wishes by appointing upon the proper committees men who will act in accordance with his views; and he may enhance the influence of his own, that is of the majority party, and weaken that of the minority, by seeing to it that the best men of the minority are wasted upon unimportant committees, while their insignificant men are given places on important ones.

210. Recognition. Through the speaker's power of recognition he exercises almost as much influence over the course of legislation as through his power of appointing the committees. Originally the rule was that the speaker should recognize the member who first asked for recognition. In present practice there are few limitations on his power to recognize whom he pleases. Ordinarily it is customary for him to recognize the chairman of the committee, *i.e.*, to recognize a committee in the person of its chairman, in

preference to an individual member. Similarly, while a bill is passing through its various stages, preference is given to the member who has it in charge. Custom has placed upon him a few other restrictions also, but in emergencies he may use his power of recognition in such a way as to give him absolute control of legislation. He may prevent a measure to which he objects from being voted upon at all by refusing recognition to any member who wishes to bring it to a vote. The only real limitation upon his absolute power in the matter of recognition is the possibility of calling down upon himself the disapproval of his own party members.

211. Committee on Rules. The third source of the speaker's power over legislation is to be found in his chairmanship of the committee on rules — a small committee made up of only five members, three from the majority party and two from the minority, but a committee which has in recent years become by far the most powerful one in the house. Its three majority members are the ablest and most experienced members of their party, the party leaders. Under existing rules this small committee has absolute power to decide what business shall come before the house. This it does by means of its exclusive power of initiating the *special order* (an order of the house naming a special time for the consideration of a measure). The power of the committee has, of course, been given to it by vote of the majority in the house and could be taken away from it in the same manner. That it is permitted to retain it is due to the fact that some such directing committee is necessary to enable a body so large to accomplish its work.

212. The Party Caucus. One other agency employed by

congress to facilitate the work of legislation should be noticed. This is the organization of parties in congress. If we are to have efficient and successful party government, it is clear that some sort of organization is necessary. The party must devise some means of informing its members of its wishes in regard to the measures to be voted on, some means of securing united action from its members on important questions, some means of noting changes of opinion among its members. This work is accomplished by means of the party caucus. At the beginning of every congress caucus committees are chosen, whose business it is to call the caucus meetings and to act as general party managers in the legislature. In matters of minor importance party members are allowed a good deal of freedom; but if a measure is deemed important enough to require concerted party action, it is made a "caucus measure." A meeting of all the party members is called and all the force of party influence is exerted to secure a unanimous party vote. The member who "goes into caucus" on a measure is considered in honor bound to vote upon it in the house in accordance with the wishes of his party, and "bolting" is very rare.

213. The Necessity for Expediting Business. We have seen something of the way in which the house works and of the variety of agencies it employs for expediting business. The necessity for the employment of such agencies becomes obvious when we consider how very large is the number of bills introduced every year. In the 37th congress (1861–63) 1,026 bills were introduced. In the 57th there were 22,000. The proportion of those that pass is, of course, very small. The vast majority never reach a third reading. Many bills are introduced in the expectation that they will be "buried"

in committee or on the calendar. They are introduced to satisfy a constituency, to gratify some private or local interest, and the house understands well enough what their fate is to be. Most of the bills introduced are private bills — local or personal in character, bills for satisfying claims against the government, granting pensions, etc.

214. Contrast between the Houses. More than one writer has described the impression made upon him on seeing congress at work, and all have noted the contrast between the two houses. About the senate there is an air of gravity and dignity. It has been described as making somewhat the impression of a diplomatic congress. At the same time it is "modern, severe, practical." "The faces are keen and forcible as of men who have learned to know the world and have had much to do with it." The house, on the other hand, makes a general impression of disorder, due in part to "the raising and dropping of desk lids, the scratching of pens, the clapping of hands to call the pages, . . . the pattering of many feet, the hum of talking on the floor and in the galleries;" but due in part also to an "absence of dignity both in its proceedings and in the bearing and aspect of individual members." Yet it may be questioned whether the house is not after all in some respects the more impressive body of the two. Mr. Bryce says of it:

"This huge gray hall, filled with perpetual clamor, this multitude of keen and eager faces, this ceaseless coming and going of many feet, this irreverent public, watching from the galleries and forcing its way onto the floor, all speak to the beholder's mind of the mighty democracy, destined in another century to form one-half of civilized mankind, whose affairs are here debated. If the men are not great, the in-

terests and the issues are vast and fateful. Here, as so often in America, one thinks rather of the future than of the present. Of what tremendous struggles may not this hall become the theatre in ages yet far distant, when the parliaments of Europe have shrunk to insignificance?"

215. Desirability of Career in Congress. It would seem as if a career in congress, the supreme legislative body of one of the greatest nations in the world, ought to offer attractions at least equal to those of the professions and the higher spheres of commercial and industrial life. As a matter of fact, however, political life attracts comparatively few of the most highly gifted and ambitious. Not only is the congressman's tenure of his position very precarious, but the position itself offers little opportunity for distinction. The real work of legislation is done in the committee, and the world sees and knows nothing of it. Real merit and ability will gain recognition in congress as everywhere else, provided its possessor is permitted to remain there long enough to make his influence felt, but comparatively few are so permitted. This is particularly true of the house. By the time a new member has mastered thoroughly the procedure of the house his term is at an end, and he has had no opportunity to distinguish himself. If he is returned for a second term, he is one of a fortunate few. The position of senator is naturally more desirable than that of representative. He has more power, more dignity, a more permanent and more independent position. In some respects, indeed, the position of senator is the most desirable in the political world. It is more permanent than that of president or cabinet officer, it requires less labor, it involves less vexation by office-seekers; but it is open to only a few. Of those who seek a political

career the great majority must content themselves with the much less attractive work of the house.

Library References. — Ashley, §§ 260–263, 283–291, 298–300; Macy, Chap. XXXIV; Macy, *First Lessons*, Chap. XVII; Dawes, Chaps. IV–V; Bryce, Vol. I, Chaps. XII–XV, XIX; Hinsdale, Chap. XXIV; Wilson, §§ 1061–1062, 1071–1077, 1080–1081; Congressional Directory; Wilson, *Congressional Government*, Chap. II, pp. 168–169, 193–219, Chap. VI; Harrison, Chap. III; Alton, Chaps. V–VI, VIII, XI, XV–XVI, XX–XXIII, XXV–XXVIII, XXX–XXXII; Lalor, Article on *Parliamentary Law;* Woodburn, pp. 223–226, 230–231, 257–301, 313–315; Fiske, pp. 228–230.

QUESTIONS ON THE TEXT

157. What are legislative bills? Where may they originate under the national government? What is the difference between a bill and a law?

158. State the provision of the constitution regarding bills vetoed by the president. Give a reason for this provision.

159. Give the different steps by which a bill becomes a law.

160. What are legislative committees? What are their relations to legislation?

161. Explain the necessity of legislative committees. State two evils that may result from transacting business through such committees.

162. State the advantages of committees in legislative bodies. What is meant by committee of the whole? State an advantage of considering a bill in committee of the whole.

163. What power has the speaker of the house over legislation?

164. How is a bill introduced in the senate? in the house?

165. If a committee attempts to smother a bill, how may congress regain possession of it?

166. How is a vote on a bill taken? In cases of doubt, what means may be resorted to?

167. Explain the meaning and use of the following terms as applied to congress: caucus, log-rolling, jobbery, bolting, special order, counting a quorum, filibustering.

168. Which house of congress is the more dignified, and why? Discuss fully.

169. Define the "cabinet, or ministerial system" of government; the "congressional, or committee system."

170. In how many ways may a committee "kill" a measure referred to it? In what other way may a committee shape legislation?

CHAPTER XI

EXECUTIVE DEPARTMENT: PRESIDENT AND VICE-PRESIDENT

216. Executive Department. We come now to the consideration of another of the three great departments essential to every complete government — the executive. We have seen how the constitution provided for the creation and organization of a law-*making* department and endowed it with powers, and we have learned something of the way in which this branch of government has developed in actual practice and of the means by which it performs its functions. It is our task now to ask the same questions in regard to the law-*enforcing* department: how was it created? how is it organized? what may it do? how does it do it?

217. The Convention and the Presidency. The makers of our constitution believed firmly in the separation and coordination of the three branches of government. To a greater or less extent this separation existed in the governments of the various states; and their undoubted superiority to the government of the confederation, in which such executive functions as existed were united with the legislative, was attributed to this fact of separation. The desire to establish a similar separation of powers in the national government with only so much interaction as was absolutely necessary in order to prevent the usurpation of power by any one of the three branches, is seen very clearly in the

organization of all of them. It is seen particularly in the creation of what had not before existed, namely, the office of President of the United States. The congress of the confederation had had a presiding officer whom they called a president; but aside from the duty of presiding at the meetings of congress, his function differed not at all from those of his colleagues. He was in no sense the executive head of a government.

218. A Difficult Question. The problems with which the convention struggled in creating and organizing a separate executive department seem to have been in some respects the most troublesome with which they had to deal. Almost every question that arose in connection with the matter called forth serious debate. Whether there should be a single executive or an executive body or council, what should be the length of the term, whether or not the executive should be reëligible, what should be the manner of choice — on all these points widely different opinions were entertained in the convention. One of them, the question as to the method of choice, is said to have occupied a seventh of the whole time of the convention.

219. Plan Adopted. We are now so accustomed in all our governments, national, state and local, to the practice of vesting executive authority in a single person, that the idea of a plural executive seems strange to us; yet in the convention the plan of having a plural executive was warmly advocated. To many of the men of that period the idea of a single executive savored of monarchy, and monarchy they could not abide. It was argued in the convention that the people would never ratify a constitution that provided for a single executive. On the other hand, the failure of the con-

federacy had convinced many that what the country needed above all things was a strong executive, capable of acting vigorously and promptly; and this it was argued could never be secured through a council or assembly. This view finally prevailed and a single executive was agreed to, but the convention took good care to safeguard the liberties of the people in a variety of ways. They devised a mode of election that was intended to make him independent of the national legislature and free to devote himself solely to the interests of the whole people; they made him subject to impeachment and removal in case he betrayed the trust reposed in him; they limited his term of office; they gave the senate a share with him in certain very important executive functions; and they gave the control of the public purse into the hands of congress. It would seem sufficiently obvious that such limitations as these are hardly compatible with monarchical power such as the men of that time stood in dread of; yet it was deemed wise to attempt to prove in The Federalist that no very close analogy existed between the king and the president of the United States.

220. The Qualifications for the Presidency required by the constitution are that the candidate shall be a natural-born citizen or a citizen at the time of the adoption of the constitution, that he shall be at least thirty-five years of age, and that he shall have been for fourteen years a resident within the United States. The clause making eligible those who were citizens at the time of the adoption of the constitution, even though foreign born, has, of course, become inoperative. It was inserted in order not to bar out such men as Hamilton and Wilson, who, though not born within the United States, were among the ablest, most devoted, and

most patriotic citizens of the young republic. The phrase "natural-born citizens" has been interpreted to mean born within the jurisdiction of the United States. Thus children born to American citizens on American vessels in foreign ports, or to our ambassadors, consuls, or other representatives in foreign countries, or to American citizens travelling or temporarily sojourning abroad, do not become ineligible to this office. On the other hand, children born in this country to foreign representatives are not eligible.

221. Term and Reëligibility. Widely varying opinions were held in the convention as to what should be the length of the president's term of office, and the question was closely bound up with that of his reëligibility and the manner of election. Four years was the term fixed by the constitution, and the president was made reëligible. Some suggested three years and many favored a longer term, five, six, seven, and ten years being among the suggestions. Hamilton, in his desire to create a strong executive, favored a life term subject only to removal by impeachment. In general those who favored a long term were also in favor of making the president ineligible for reëlection. Likewise, those who favored his election by congress (for that was one of the modes of election proposed) thought that he ought not to be made reëligible, since that would increase the likelihood of his intriguing with congress for reëlection. While the constitution places no limit on the reëlection of the president, the custom of reëlecting but once has become so firmly fixed that it would be very difficult to change it. Many now question the wisdom of allowing even a second term. They argue that under the present arrangement the president is likely to be more concerned about being president for two

terms than about being a good president for one; and that he will in consequence strive to please the party managers, and only secondarily to serve the people.

222. Salary. While the constitution provides that the president shall receive compensation for his services, it makes no attempt to determine the amount of his salary. It only provides that it "shall neither be increased nor diminished during the period for which he shall have been elected," and that "he shall not receive within that period any other emolument from the United States or any of them." Congress first fixed the salary of the president at $25,000. In 1873 this was increased to $50,000, and has since remained unchanged. In addition to his salary the president is given the use of the national "executive mansion," the "White House." It may be noted in passing that the cost of maintaining the executive branch of our government (including the salaries of the president, the vice-president and the secretary to the president, together with the expenditures for the care of the executive mansion and a few other items) is extremely small compared with similar expenditures by foreign governments.

223. Election: Methods Proposed in the Convention. These questions of the qualifications, term, salary, etc., of the chief executive were the easiest ones with which the convention had to deal in organizing the executive department. They met the most difficult one when they attempted to devise a method of election. When their work was finished, there was no other part of the constitution that they regarded with so much satisfaction as the plan agreed upon; yet no other part has failed so completely to fulfil the expectations entertained of it. In the convention almost every

possible method of choice was proposed. Some proposed that the president be elected by congress; others that he be elected by the executives of the states; others by the state legislatures; others by electors chosen by the state legislatures or by the people. Mr. Wilson of Pennsylvania proposed direct election by the people, apologizing at the same time for his suggestion, because he felt that it would appear chimerical to the convention. If there existed in the convention a deep-seated fear of monarchy, there was an almost equal distrust of pure democracy. It was not believed that the people would possess the information or the discernment necessary to enable them to choose the best man for the place; it was thought that they would be too much at the mercy of demagogues, and that, moreover, to leave the decision of so important a matter in their hands might result in tumult and disorder. On the other hand, if the choice were left to congress or any other preëxisting body that could be tampered with beforehand, there would be danger of intrigue and corruption. The convention deemed it desirable that the people should have some voice in the matter; but they thought it wise to place the immediate election in the hands of a specially chosen electoral college, who, after due deliberation, should choose as wisely as possible. Hence the double mode of election.

224. Method Chosen. As originally wrought out in the constitution, this method was as follows: Each state was to select, in whatever manner the state legislature might direct, a number of electors equal to the number of its senators and representatives in congress, but no United States officer was to be eligible to an electorship. The electors were then to meet in their respective states on a day fixed by law and

vote for two persons, one of whom was to be an inhabitant of some other state than their own. They were then to send sealed to the capital a certified list of the persons voted for with the number of votes received by each, and these lists were there to be opened by the president of the senate in the presence of both houses and counted. The person receiving the highest number of votes, provided that number were a majority of the whole number of electors, was to be president, and the person having the next highest number was to be vice-president. If two candidates had an equal number and that number a majority, or if no candidate had a majority, the house of representatives was to choose the president, in the first case from the two that were "tied," in the last case from the five highest on the list. The house was to vote by states, the whole representation from each state voting as one, two-thirds of all the states constituting a quorum, and a majority of all the states being necessary for election. In case of a tie for vice-president the senate was to elect that official.

225. A Defect Discovered. It will be noticed that according to this provision the electors might vote for two persons without designating which one they desired for president and which for vice-president. The one receiving the greatest number of votes in excess of a majority was to be president; and the person receiving the next highest number, whether it was a majority or not, was to be vice-president. The result was that in the election of 1800, Jefferson, whom the electors desired for president, received the same number of votes as Burr, whom they had meant to elect vice-president. This gave the power of election to the house, and Jefferson was elected, though not without difficulty.

This incident led to the adoption of the XIIth amendment, which provides the present mode of election.

226. The XIIth Amendment. By this amendment it is provided that the president and the vice-president shall be voted for separately, and that distinct lists of those voted for shall be sent to the capital. The votes are to be opened and counted as provided before; and in case no candidate has a majority, the house is to elect as before, except that they are to choose from the three instead of the five highest. If, when the choice devolves upon the house, that body fails to elect a president before the 4th of March, the newly elected vice-president shall act as president. If the electors fail to elect a vice-president, that duty devolves upon the senate, which makes its choice from the *two* highest on the list voted on for vice-president. In case neither president nor vice-president should be chosen before the 4th of March, the constitution makes no provision for the succession.

227. Another Defect in the constitutional provisions for election became apparent in the election of 1876. In that election there were 369 electoral votes to be cast, 185 being necessary to a choice. Of these Mr. Tilden, the democratic candidate, had unquestionably received 184; while Mr. Hayes had received 164 undisputed votes. In four states, however (South Carolina, Florida, Louisiana and Oregon), with 21 electoral votes, both parties claimed the election. In all of these states both sets of electors had met, voted, and sent up certified returns. The question now arose, "Who shall decide which return is to be accepted?" All that the constitution says in regard to the matter is that "the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates and *the votes shall*

then be counted." The republicans insisted that the vice-president, a republican, should decide, since he was president of the senate. The democrats maintained that since the count was to be made in the presence of congress, the reasonable inference was that that body was to decide upon the validity of it. In this case, however, the senate was republican and the house democratic, so that the only result of leaving the decision to congress would be a deadlock. The difficulty was temporarily solved by the creation by congress of an electoral commission consisting of five senators, five representatives, and five justices of the supreme court. The vote in the commission, which was made up of eight republicans and seven democrats, was given on strictly party lines and the republican candidate was elected. Later an act was passed by congress requiring the choice of electors to be settled by the laws of the state at least six days before the meeting of the electors. In case such settlement is not effected, the dispute is referred to congress, and if congress fails to decide, the electoral vote of the state is lost.

228. Time and Method of Choosing Electors. The constitution gives to congress the right to determine the time for choosing the electors in the various states, as well as the right to fix the day when the electors shall cast their votes. The only restriction is that the day fixed for the final vote shall be the same throughout the United States. The day first fixed upon by congress was the first Wednesday in December, and the choice of the electors by the people was to occur thirty-four days earlier. Later the time for choosing the electors was changed to the first Tuesday after the first Monday in November; while a still later act changed the

time for casting the electoral vote from the first Wednesday in December to the second Monday in January, the object being to give more time for the settlement of disputed elections in the states. The method of choosing the electors was left by the constitution to the decision of the state legislatures; consequently it would be possible for them to be chosen in a great variety of ways. As a matter of fact, the method is now uniform. Electors are chosen in every state on a common ticket by direct popular vote. At one time the district plan of election was used in some of the states; but this had long been abandoned when, in 1891, it was revived in Michigan by an act of the legislature. The law was contested in the courts, but it was declared constitutional by the supreme court. It was, however, repealed in 1893.

229. Failure of the Electoral College. Such, then, is the method of the presidential election as provided by the constitution and by statute. How does it work in practice? We have seen that in providing the method of double election the framers of the constitution were influenced by the belief that it would secure the choice of men especially fitted for the electorship, who would then, unfettered by outside influence, make the choice that seemed to them the wisest. Naturally they could not foresee the growth of our party system of government, which was to render their carefully elaborated scheme a failure and make of the electoral college a mere machine for registering the choice of the people. For this is what it has become. Every elector has an unquestionable legal right to vote for whom he pleases; but he is bound by a pledge of honor, by a custom as strong as any law, to vote for the candidate of his party. So completely has the

elector become a mere party agent, whose sole business it is to ratify the choice already made, that in general nobody knows and nobody cares what his personal qualifications may be.[1] The voter, when he casts his ballot, is in reality voting directly for the presidential candidate whose name it has been deemed wise, in order to avoid mistakes, to place at the top of the ticket, and only incidentally does he vote for the electors. This failure, however, of the electoral college to retain its power of independent choice is probably not much to be regretted. With the development of the party system the college would have been almost certain to come directly under the control of the party organizations, and it is better that it should vote at the bidding of the people than at that of the party managers, even though the party managers may control the popular vote.

230. A More Serious Defect. Some of the other consequences resulting from the employment of this method of election under the system of party government are more serious. The present system of choosing the electors by general ticket over the whole state makes the election virtually an election by states. The state "goes republican" or it "goes democratic," *i.e.*, it elects, with rare exceptions, its full complement of electors from a single party, and casts the whole number of its electoral votes for the candidate of that party. Now it may happen that in one state the plurality of the winning party is very large and more than overcomes the small adverse pluralities in a dozen states, while the electoral vote of the dozen states is greater than

[1] Divided state delegations are, to be sure, by no means unknown. Occasionally this is due to the rejection of a candidate on personal grounds; more frequently to other reasons. See Woodburn, p. 127, note.

that in the one state giving a larger plurality. For example, in the presidential election of 1900, Idaho, with three electoral votes, gave Mr. Bryan a plurality of 2,448 votes; Kentucky, with thirteen votes, gave him a plurality of 7,975; Nevada, with three electoral votes, gave him 2,516, or a total plurality in the three states named of 12,939; Michigan, with fourteen electoral votes, gave Mr. McKinley a plurality of 104,584. Thus Mr. McKinley, with 91,645 more votes than his opponent received, would have been defeated in the electoral college by a vote of 19 to 14, if the decision had been left to the four states above named. Thus it will be seen that the electoral college may be the means of defeating the clearly expressed wishes of the people. This actually happened in 1888 when Mr. Cleveland received a plurality over Mr. Harrison of 95,534. This verdict of the individual voters was reversed by the electoral college, which gave Mr. Harrison 233 electoral votes as against 168 for Mr. Cleveland. Moreover, under the present plan the struggle is concentrated in a few doubtful states. To win or lose them means to win or lose the election, and this naturally increases the temptation to political corruption in those states.

231. Presidential Succession. The president is removable only on impeachment. Only one president, Andrew Johnson, has been impeached, and he was acquitted. A vacancy in the presidential office may, however, occur in a variety of other ways — by the death or resignation of the incumbent; by his inability, from whatever cause, to discharge the duties and powers of the office; by the refusal of the newly elected president to accept the office, though this is not likely ever to occur. In case a vacancy does occur in any of

these ways, the vice-president succeeds. Further than this the constitution makes no provision for the presidential succession, but the deficiency has been supplied by statute. By the presidential succession bill of 1886 it is provided that in case of the inability of both president and vice-president to perform the duties of the office, the cabinet officers shall succeed in the following order: (1) secretary of state, (2) secretary of the treasury, (3) secretary of war, (4) attorney-general, (5) postmaster-general, (6) secretary of the navy, (7) secretary of the interior, (8) secretary of agriculture, (9) secretary of commerce and labor. (§ 246.) Should one of these officers fail to possess the constitutional qualifications for president, he is, of course, excluded from the succession.

232. The President's Powers. What are the president's powers and duties? Just as we saw that to the national legislature are intrusted executive and judicial as well as legislative functions, so also we shall find that to an even greater extent the executive exercises legislative and judicial functions. His executive functions are:

(1) To be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the service of the United States;

(2) To make treaties with the concurrence of two-thirds of the senate;

(3) To nominate and, with the consent of the senate, appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers not otherwise provided for by the constitution or by statute;

(4) To receive ambassadors and other public ministers;

(5) To commission all officers of the United States;

(6) To take care that the laws be faithfully executed.

His legislative powers are:

(1) To sign or veto measures passed by congress;

(2) To inform congress of the state of the union and recommend measures for their consideration;

(3) To call special sessions of congress;

(4) To adjourn congress when the houses cannot agree upon the time of adjournment.

His judicial function is to grant reprieves and pardons and to commute sentences for offences committed against the United States except in cases of impeachment.

233. Classification not Absolute. This classification must not be taken too absolutely, for a moment's consideration will show that some of these powers really fall into two classes. In making treaties, for instance, the president exercises not only executive functions but legislative as well, since treaties are a part of the supreme law of the land. The appointment of judicial officers, also, while it is strictly an administrative act, has a distinctly judicial bearing.

234. His Legislative Powers. Some of these presidential powers require further discussion. Very important are the president's legislative powers. In the power to call extraordinary sessions of congress and to communicate his message he has a real power to initiate legislation. There is no legal bar to his constructing and presenting regular bills to congress, only the custom has never happened to grow up.[1] Instead, the heads of the administrative departments make written reports and public recommendations, have private conferences with the congressional committees, and use their personal influence with party leaders in the house to secure

[1] See Woodburn, pp. 144–145.

the necessary legislation. While the president's annual message may exercise considerable influence on legislation, it does not necessarily do so, particularly if the majority in congress is not of the president's party. The present plan of presenting the president's message is not the original one. Washington and Adams appeared in congress in person and addressed the two houses assembled in joint-session. Jefferson inaugurated the present custom of sending the message to be read in each house by the secretary or clerk, the most frequently alleged reason for the change being that he was a poor speaker. Whatever the reason, the custom has become so firmly fixed that it would be extremely difficult for any president to break away from it.

235. The Veto. The president, however, exercises his most effective power over legislation in a negative way by means of the veto. We have referred before to the president's veto power (§ 196), but we have not studied fully the method of its working. When a bill that has passed the legislature comes to the executive mansion, it is usually sent to the head of the department concerned, or, if there is a question of its constitutionality, to the attorney-general. The president then takes it up with the report of the department, and either signs it or vetoes it in the manner prescribed by the constitution. In case congress adjourns within ten days (Sundays excepted) after sending a bill to the president, he may simply disregard it altogether, neither signing nor returning it. This so-called "pocket-veto," unlike the regular veto, is an absolute one and may be employed very effectively to prevent congress from overwhelming the president at the end of a session with a host of bills. It is just

this hasty legislation crowded into the last few days of a session that needs the most careful scrutiny, and it is well that the president should be given some such power over it as that provided by the "pocket veto."

236. Restrictions on the Veto. The president's regular veto is, of course, a restricted one. In the first place, it may be overridden by a two-thirds vote of each house, *i.e.*, by two-thirds of those present and voting. In the second place, the president must approve or disapprove the bill as a whole. He cannot veto one item or proposition and give his assent to the rest. It is this necessity that gave rise to the custom of attaching "riders" to important bills. The "rider" has been defined as "an unrelated piece of legislation attached to another legislative measure with the purpose of having it ride through on the merits of the measure to which it is attached." They are usually attached to appropriation bills, and virtually say to the president: "Sign this measure or find your own means for running the government." The practice of attaching riders to important bills became common; but it gave rise to serious abuse, and public opinion has condemned it.

237. Working of the Veto. The veto power is an extremely important one and has worked remarkably well. It may prevent inexpedient and unwise legislation, and it must act in any case as an appeal to the sober second thought of congress and the nation. It was never intended to be a positive check upon legislation, nor does it in general act as one, but it does check overhasty legislation. It was originally given to the executive as a means of preventing the legislative department from encroaching on his own powers or those of the judiciary; but it has come to be used on the much wider

ground of general expediency also, and of this public opinion approves. Most of the presidents have made a very sparing use of the power; and where they have employed it freely, their course has in general been approved both by the nation at large and by congress, when it came to reconsider its action.

238. Calling Extra Sessions. The power of calling an extra session of congress or of either house is granted to the president in order to enable him to meet an unforeseen emergency, such as the necessity of the immediate consideration of a treaty, the probability of war, the necessity of preserving the credit of the country or providing funds to conduct the government. The power of convening congress in extra session has been rarely exercised. A special session of the house alone has never been called. Special sessions of the senate are more common, and it has become customary for the outgoing president to call such a session to act upon the nominations for cabinet and other officers which the new president will make immediately after his inauguration.

239. Treaty-making Power. Another very important presidential power that is perhaps more legislative than executive, is the treaty-making power. This power can be exercised only with the concurrence of two-thirds of the senators present. There is also, of course, the implied restriction that the treaty shall be in all respects constitutional. The usual steps in the negotiation of a treaty are as follows. If friendly relations exist between the two nations concerned, the negotiations are conducted at the capital of the one from which the suggestion first came. If this is in Washington, the secretary of state acts for the United States,

and the minister of the foreign country concerned acts for his government. If the treaty is negotiated in some other country, the United States minister to that country, or some other person or persons appointed by the president, act for this government. In either case the president directs the general course of the negotiations. A peace treaty closing a war is generally negotiated in some neutral capital by special commissioners from the two or more nations concerned. After a treaty has been framed, it is sent to the senate, where it is discussed in executive session. The senate may approve it as it stands, may reject it, or may amend it. If amendments are made, they must be accepted by the president and by the other government interested. When it has been finally approved on both sides, duplicate copies are made, signed by the chief officers of both governments, and then exchanged. This is called the "exchange of ratifications." The president then publishes the treaty, proclaiming it at the same time as a part of the law of the land.

240. The Appointing Power conferred upon the president is probably the power that gives him his greatest political influence. The necessity of giving him large appointing powers grows naturally out of the duty laid upon him to "take care that the laws be faithfully executed." It will be seen, however, that the constitution gives congress authority to reduce very considerably the president's power over appointments. "The congress may by law vest the appointment of such inferior officers as they think proper . . . in the courts of law or in the heads of departments." Besides the ambassadors and other public ministers, consuls, and judges appointed by the president with the consent of the

senate, a large number of other officers whose positions have been established by law, among them the heads of the executive departments, receive their appointments in the same way. The president cannot, of course, examine personally into the fitness of all his appointments. He must depend largely upon the advice of the heads of departments and upon the recommendations of senators and representatives of his own party from the states in which the office is located. Partly in consequence of this fact there has grown up, in the case of those appointments requiring the confirmation of the senate, a custom that greatly limits the appointing power of the president. This is the custom known as "senatorial courtesy," by which the senate almost invariably refuses to confirm an appointment unless it meets with the approval of one or both of the senators in whose state the office is located, provided those senators are members of the majority party in the senate.

241. The Life of the President is an extremely busy one. Mr. Harrison pictures it thus: "It (the White House) is an office and a home combined — an evil combination. There is no break in the day — no change of atmosphere. The blacksmith, when the allotted hours of work are over, banks his fire, lays aside his leather apron, washes his grimy hands and goes home. . . . There is only a door — one that is never locked — between the President's office and what are not very accurately called his private apartments. . . . The mail that comes daily to the Executive Mansion is very large; in the early months of an administration it is enormous, as many as eight hundred letters being sometimes received in a day. . . . Unless the President is very early, he will find some callers waiting for him as he passes through the

Cabinet room to his office. . . . His time is so broken into bits that he is often driven to late night work, or to set up a desk in his bedroom, when preparing a message or other paper requiring unbroken attention. . . . For the first year and a half of an administration the president spends from four to six hours of each day talking about things he will not have to act upon for months, while the things that ought to be done presently are hurtfully postponed. . . . This is only an outline of a business day and its surroundings, but it will serve, perhaps, to show that the life of the President is a very busy one. What contrariety and monotony! One signature involves the peace of the nation, another its financial policy, another the life of a man, and the next the payment of ten dollars from the National Treasury." [1]

242. Great Statesmen and the Presidency. It is generally admitted that, taken as a whole, our presidents have not been the greatest statesmen that our country has produced. For this a variety of reasons has been assigned. Of those who choose a political career, only a few, and those not necessarily the greatest, find opportunity to commend themselves to their countrymen in such a way as to secure them a nomination to the presidency. The methods of congress in large measure cut them off from such opportunities. Further, really great men are seldom highly popular men. Mr. Bryce has summed up the reasons for the lack of really great men in the list of the presidents as follows: "Great men are not chosen president, first, because great men are rare in politics; secondly, because the method of choice does not

[1] Harrison: "This Country of Ours," pp. 169–179. Since Mr. Harrison wrote this statement a suite of offices has been built for the use of the president.

bring them to the top; thirdly, because they are not, in quiet times, absolutely needed." [1]

243. Executive Power not Perfect. Like every other governmental agency ever created, the arrangements by which the executive power of our government is organized have their defects. It has been pointed out that the supremacy of the office, by far the highest in the gift of the nation, offers too great a stimulus to ambition; that it lures the statesman from the strict path of rectitude and induces him to seek popularity at whatever cost. Again, the frequent recurrence of the turmoil accompanying a presidential election is looked upon by many as undesirable, particularly as such agitation is often wholly unnecessary, the issues being not real ones, but issues manufactured by politicians in order to keep or to gain place. The discontinuity of policy resulting from our frequent change of presidents is also pointed to as a defect. Even when the new president is of the same party as his predecessor, there is likely to be considerable change; and if of the opposite party, there ensue radical changes resulting too frequently in the replacing of tried and experienced men by men new to the work. It is also noted that at the close of each administration there is likely to occur a period of inactivity. The outgoing president hesitates to embark on any new line of policy, since it may be completely changed by his successor.

244. The Vice-President. In the constitution as it was originally adopted the qualifications of the vice-president were not explicitly stated, though the natural implication was that they must be the same as those of the president. By the XIIth amendment, however, it was explicitly stated

[1] Bryce, Vol. I, p. 84.

that "no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States." The time of electing the vice-president and the length of his term are the same as in the case of the president. His only duties are to preside over the meetings of the senate and to succeed the president. In the senate he is a mere moderator. He has no power of appointing committees and no vote except a casting vote. The office has been generally regarded as of little importance, of so little importance indeed, that capable men have avoided, if possible, a nomination to it. The result is that as a rule obscure and inferior men have been elected to the office. The danger is not inconsiderable that such men may be called upon to fill the presidential chair and discharge the duties of an office for which they were never intended. Five presidents have died in office. It has been suggested that this defect in our system be remedied by giving the vice-president more power, either by giving him a seat in the cabinet, or by giving him a vote in the senate, or by both these devices.[1]

Library References. — Ashley, §§ 269, 326–351, 394–400; Macy, Chap. XXIII, pp. 139–140; Macy, *First Lessons*, Chap. XVIII; Dawes, Chaps. VI–VII; Fiske, pp. 230, 232–244; Bryce, Vol. I, Chaps. V–VIII, XX–XXI; Hinsdale, Chaps. XXVIII–XXXII; Wilson, §§ 1097–1108; Curtis, Vol. I, Chap. XXIX; Harrison, Chaps. IV–X; *Federalist;* Madison's *Debates of the Federal Convention;* Wilson, *Congressional Government*, pp. 43–52, 242–256; Dole, Chaps. XIV, XVIII; Alton, Chaps. X, XII, XVII; Lalor, Article on *Executive;* Woodburn, Chap. III.

[1] See Theodore Roosevelt, "American Ideals," pp. 187–188.

QUESTIONS ON THE TEXT

171. Describe the executive department of the United States government.

172. State the requirements for eligibility to the office of president. Give a full reason for such requirements.

173. State the particulars in which the constitutional qualifications of the president and a member of the house of representatives differ. Account for this difference.

174. What office in the United States is restricted to natural-born citizens? Why this restriction?

175. Give the length of term and salary of the president. Give reasons for a six-year term with no reëlection.

176. Give in substance the provision of the constitution in reference to the compensation of the president.

177. Describe the three methods by which the convention proposed to elect the president. Describe the method adopted, and state why its original purpose has not been accomplished.

178. Explain why the manner provided in the constitution for choosing the president by electors was preferred to other methods that were proposed.

179. How is the vice-president chosen? Over what body does he preside?

180. What is meant by the electoral college? What determines the number of electors to which a state is entitled? To how many electors is this state entitled?

181. State how a member of the electoral college is chosen, and mention his chief duty.

182. Give arguments for or against choosing the president by direct popular vote.

183. Give arguments sustaining the present mode of electing the president and vice-president.

184. Describe the manner of choosing a president in case the electoral college fails to elect. State the limitations under which this is done.

185. Describe the manner of choosing the vice-president in case no person has a majority of all ballots cast by the electoral college.

186. In case of death of both president and vice-president, who then becomes president? State the substance of the present law of the presidential succession.

187. Mention four powers of the president.

188. Mention three leading powers of the president, and give two powers possessed by the president subject to approval by the senate.

189. Mention with reference to the president (1) two executive powers, (2) one legislative power, (3) one judicial power.

190. What judicial power has the president?

191. What is meant by reprieve, pardon, commutation? Explain why the chief executive is given power in these matters.

192. How does the constitution make the president responsible for legislation?

193. What is the president's message? Briefly describe it.

194. Give in substance the provision of the constitution regarding the power of the president to convene and to adjourn congress.

195. What is the veto power? Explain the importance of the veto power in a republic.

196. "The issue is now with congress. Prepared to execute every obligation imposed upon me by the constitution and the law, I await your action." Comment on the powers and duties of the president and of congress, referred to in this extract from President McKinley's message on the Cuban question (1898).

197. What are treaties, and by whom may they be made for the United States?

198. Describe the process of making and ratifying a treaty.

199. In whom is vested the power to appoint ambassadors?

200. Give the constitutional qualifications of the vice-president.

CHAPTER XII

EXECUTIVE DEPARTMENT: PRESIDENT'S ASSISTANTS

245. The Cabinet was not, like the presidency, created by the constitution. When the organization of the executive power was under discussion, it was proposed that an executive council be created to act as a check upon the president; and there was also some discussion as to the wisdom of forming an advisory body to assist him, without giving it any power to control his action. Neither of these plans, however, received the sanction of the convention, and the constitution makes no provision for a body possessing the character and functions of the president's cabinet. The only approach to such a provision is found in the clause giving the president the right to "require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices." There were, then, to be executive departments whose chief officers were to advise and otherwise assist the president; but it was evidently contemplated by the convention that such assistance would be required from each separately, not that they would be formed into a council for the purpose of consulting and advising upon matters of general administrative policy. The executive departments have been created by acts of congress; but the cabinet with its peculiar functions, though made up of the heads of these departments, is the creation neither of constitutional nor of statute law. Its relations to the president and to

congress have been determined by custom only. It has no legal position as an advisory body, and the president is in no way legally bound by its advice, though its opinion may and usually does have influence with him. No official record is kept of cabinet meetings.

246. Relations of Cabinet Officers to President. The head of an executive department is more than a mere administrator of the business of his department. The actual performance of such duties can be intrusted to the assistant secretaries, the heads of bureaus, and minor officials; but the secretary must understand his department as a whole, must know its needs, must see that it is administered in conformity with the policy of the administration. His function as member of the cabinet is even more important than his function as head of the department. He is first of all the president's adviser not only in regard to the business of his own department but in matters of general policy as well. Under our present system of party government, therefore, it is important that there should be harmony in the cabinet, if a policy is to be chosen and consistently pursued. The secretary ought to be not only of the president's political party but also in close personal sympathy with him. It is now thoroughly understood that, if a cabinet member finds himself out of harmony with the president's policy, it is his duty to resign or the president's privilege to remove him. It is for this reason that the president is given so free a hand in the choice of his cabinet, and partly for this reason also that he usually forms an entirely new cabinet upon his accession to office, even though he may be of the same political party as his predecessor. All cabinet members are appointed by the president, nominally with the consent of the senate

(though the senate practically never refuses its consent), and all receive the same compensation, $8,000 per annum. The president alone has the power to remove them.

247. Executive Departments: Organization. The executive departments are very thoroughly organized. They are divided first into bureaus, each with a commissioner at its head, who is directly responsible to the secretary. The bureaus are again divided into divisions, each with its chief of division responsible to the commissioner; while subordinate to these chiefs of division and responsible to them is the great army of clerks employed in the administrative work of the government.

248. Executive Departments: History. Those departments whose heads form the president's cabinet, have been created from time to time by acts of congress, as the need for them became apparent. When the government was organizing under the constitution in 1789, congress created three departments — the department of state, the department of the treasury, and the department of war; and the heads of these departments (called secretaries) together with the attorney-general, whose office was created the same year, formed Washington's cabinet. The department over which the attorney-general has control, the department of justice, was not created until 1870. In 1798 there was added the navy department, naval affairs having been up to this time attended to by the war department; and in 1829 the postmaster-general, whose office had existed since colonial times and whose department had been conducted since its creation in 1794 as a part of the treasury department, was made a cabinet member. The department of the interior was added in 1849. A department of agriculture was organized in 1862, but its head was

not made a cabinet officer until 1889. Finally, in 1903 the department of commerce and labor was established. It will be seen, then, that the creation of a new executive department and the calling of its chief officer into the president's cabinet are not always coincident. The departments have been created in the following order: state, treasury, war (1789); post-office (1794); navy (1798); interior (1849); agriculture (1862); justice (1870); commerce and labor (1903). Their chief officers have become members of the president's cabinet in the following order: secretary of state, secretary of the treasury, secretary of war, attorney-general (1789); secretary of the navy (1798); postmaster-general (1829); secretary of the interior (1849); secretary of agriculture (1889); secretary of commerce and labor (1903).

249. State Department. The chief cabinet officer is the secretary of state, commonly called the head of the cabinet. At cabinet meetings he occupies the seat of dignity at the right of the president. His chief duty is the conduct of foreign affairs; and since the president, because of the pressure of other business, is compelled to give him a very free hand, he practically controls the foreign policy of the nation, subject only to the restraints imposed by the senate. Thus he is brought much more prominently into public notice than are the other cabinet officers. It is his business, except in cases where special officers have been appointed for the purpose, to conduct all negotiations with foreign countries. He receives the representatives of foreign powers and presents them to the president, conducts all official correspondence with them, carries on all necessary correspondence with United States ministers and consuls to foreign countries, and issues passports to citizens of the United States

who wish to travel abroad. So far his duties are concerned with foreign affairs, but he has also some domestic duties to perform. It is through him that the president communicates with the executives of the states, and to him is given the custody and publication of the laws and treaties of the United States, and the custody of the great seal (the official seal of the United States). He is given three assistant secretaries, and his department is divided into seven bureaus: the diplomatic bureau; the consular bureau; the bureaus of indexes and archives; of accounts; of rolls and library; of appointments; and of passports.

250. Treasury Department: *Financial Duties.* The second of the great executive departments is that of the treasury. It concerns itself principally, as its name implies, with the finances of the nation, but not exclusively, for it performs also a great variety of miscellaneous duties. The principal financial duties of the secretary of the treasury are to estimate the probable revenues and the probable expenditures of the government, and to prepare plans for the creation and improvement of the public revenue. These estimates and plans he submits to congress in his annual report, in order to furnish that body with some sort of guide in the making of appropriations and the imposition of taxes. It is his duty also to superintend the collection of revenue, to issue warrants for the payment of all money from the United States treasury, and to superintend the coinage and printing of money.

251. *Internal Revenue Bureau.* We have already seen that the sources of the national revenue are customs or import duties, and excises or internal taxes of various kinds. Until the outbreak of the civil war, the United States had no

permanent system of internal taxation. Then in 1862 an internal revenue bureau was organized under the treasury department and a commissioner of internal revenue appointed.

252. *The Treasurer.* All money belonging to the United States is in charge of the treasurer of the United States. It is his duty to receive all revenue and to pay it out on the warrants issued by the secretary of the treasury or by a designated assistant, to redeem the notes of the national banks, and to manage the independent treasury system. This system was established by congress at the suggestion of President Van Buren in 1840 for the purpose of making the United States the custodian of its own money instead of depositing it with private corporations; but the law establishing it was repealed the next year, and not reënacted until 1846, during President Polk's administration. Besides the main treasury at Washington, subtreasuries have been established at Boston, New York, Philadelphia, Baltimore, Cincinnati, Chicago, St. Louis, New Orleans, and San Francisco.

253. War Department: *Military Duties.* The war department, as its name implies, has control of the military affairs of the nation; but it acts also as a department of public works, and has contributed not a little toward the advancement of science by conducting the exploring expeditions sent out from time to time by the government. With the exception of the secretary of war and the assistant secretary the principal officers are officers of the United States army. Of those whose duties are strictly or mainly military the most important are the adjutant-general, whose duty it is to issue orders for the muster and the movement of troops, to conduct the correspondence of the department and to

keep the records; the inspector-general, who inspects all military posts, all public works carried on by army officers, all military prisons, and the military academy, and reports as to equipment, discipline, sanitary condition, finances, etc.; the quartermaster-general, who has charge of the clothing and general army supplies; the commissary-general, who attends to the food supply; the surgeon-general, who superintends the medical service; the chief of ordnance, who attends to the supply of arms; the judge-advocate-general, who reviews and records the proceedings of all courts-martial and courts of inquiry, and acts as legal adviser to the department; and the chief signal officer, who superintends all military signalling by means of flags, heliograph, or other devices, and who has charge of the construction and operation of military telegraph lines.

254. *Public Works.* It is through the chief of engineers and his corps that the war department performs in large measure the functions of a department of public works. Under their direction fortifications are located and constructed, bridges and docks are built, and great sums of money are expended annually in improving rivers and harbors.

255. Department of Justice. Though the department of justice was not created until 1870, the office of attorney-general, as the chief officer of the department is called, has existed since 1789. He is the legal adviser of the president and of the heads of departments, has the general supervision of the work of the United States district attorneys and marshals, conducts all suits to which the United States is a party, is in general "public prosecutor and standing counsel" for the United States. The law officers of the various departments are under his direction and control. The work of the de-

partment is very large and the office of attorney-general one of the most important and responsible under the government.

256. Post-office Department. We have before seen something of the great volume of business conducted by the post-office department (§ 172). The postmaster-general, who is the head of the department, became a member of the cabinet during President Jackson's administration in 1829. The work of the department is divided among four bureaus, each under the direction of an assistant postmaster-general. These assistants have the general management of the post-offices with their clerks and carriers, and of the transportation of the mails; the providing of stamps and the management of the finances; the appointment of those postmasters whose appointment is intrusted to the department; and the direction of the inspectors of the department. The department provides for the free delivery and collection of mail, for a money order and registry system, for a railway mail service, and for the establishment of star routes (routes over which mail is transported by some means other than railroad or steamboat). The postmaster-general has the power of appointing all the officers of the department except the assistant postmasters-general and the postmasters whose salaries are $1,000 or more. He may also, with the consent of the president, let contracts for the transportation of mail and make postal treaties with foreign countries.

257. Navy Department. Until the establishment of the department of the navy in 1798, naval matters were looked after by the war department. The navy department has general superintendence of the construction, manning, equipment, and employment of war vessels. These duties it per-

forms by means of seven bureaus, whose heads are naval officers. These are the bureaus of yards and docks, equipment and recruiting, ordnance, construction and repair, steam engineering, supplies and accounts, and medicine and surgery. Their duties are indicated by their names. The supervision of the naval academy at Annapolis and of the naval observatory at Washington is also a part of the work of the department.

258. Department of the Interior. This department, which is under the direction of the secretary of the interior, performs, like the treasury department, a great variety of important functions. There are two assistant secretaries in the department besides six commissioners and two directors. The titles of these commissioners and directors give some idea of the scope and character of the work of the department. They are the commissioner of the general land office, the commissioner of education, the commissioner of pensions, the commissioner of Indian affairs, the commissioner of railroads, the commissioner of patents, and the director of the geological survey.

259. *The Land Office.* The most important bureau of the department is the general land office, which has charge of all the public lands of the United States, and whose duty it is to direct the survey and sales of this property and to issue titles to it. At different periods during its history the United States has in various ways come into possession of vast tracts of territory. The first of these public lands, it will be remembered, was known as the northwest territory, whose cession to the United States by the states claiming it was completed in 1786. Later North Carolina, South Carolina and Georgia ceded their claims to western lands, and since then the government has obtained enormous tracts

by purchase, and by conquest, or by both, and by annexation. Among these additions may be mentioned the Louisiana purchase from France (1803), the purchase of Florida from Spain (1821), the purchase of Alaska from Russia (1867), and the acquisition of extensive territory from Mexico (1848), as the result of the war with Mexico.

260. *System of Surveys.* Under the direction of the land office large portions of this vast domain have been disposed of in various ways. Before any disposal could be made of them, however, it was necessary that they should be surveyed. Accordingly, a system of surveys, known as the rectangular system, was very early adopted. A base and a meridian line crossing each other at right angles were first laid off, and from these the land was divided into rectangular townships, each six miles square. Each township was divided into sections of 640 acres each, and each section into quarter sections. Each section was numbered, and section 16, and later sections 16 and 36, were set apart for the support of the common schools.

261. *Land Grants.* Besides these grants in aid of education, other large grants of public lands have been made to the states for educational purposes. The states have also received from the general government large grants of swamp and saline lands and large grants of other land for purposes of internal improvement. Between 1828 and 1846 the general government granted to the states for the improvement of rivers and the building of canals, wagon-roads, railroads, etc., a total of 162,230,099 acres. Besides these state grants the United States has also given land bounties to honorably discharged soldiers and sailors in return for military and naval service, the grant partaking somewhat of the character

of a pension; and has granted large tracts to railroad companies, in order to promote the construction of railroads and thus develop the country. Many millions of acres have also been given to settlers upon compliance with certain laws requiring them to settle upon and improve the land. Thus great numbers of settlers from the eastern states and from Europe have found homes in the west.

262. *Bureau of Education.* The commissioner of education through his bureau collects statistics as to the condition and progress of education in the various states and in foreign countries, for the purpose of aiding in the establishment and maintenance of efficient school systems. Except in Alaska, the commissioner has only advisory power in the actual operation of the school systems. There he directs their management.

263. *Pension Bureau.* The pension bureau examines and adjusts all claims for pensions or bounty lands given in return for military or naval service rendered in time of war. According to the report of the commissioner of pensions for 1900 there were paid out in pensions for that year approximately $140,000,000. The question as to the advisability of granting pensions so liberally as has been done by our government has been much discussed. Mr. Harrison says of it: "There are two views of the pension question — one from the 'Little Round Top' at Gettysburg, looking out over a field sown thickly with the dead, and around upon bloody, blackened, and maimed men cheering the shot-torn banner of their country; the other from an office desk on a busy street, or from an endowed chair in a university, looking upon a statistical table." [1]

[1] Harrison, p. 285.

264. *Bureau of Indian Affairs.* One very interesting branch of the work of the interior department is that conducted by the bureau of Indian affairs. Up to 1871 the Indian tribes were treated by the government as independent nations; but a law passed that year made them the "wards of the nation." Their interests are now protected under the bureau of Indian affairs by a board of Indian commissioners, whose duty it is to oversee the expenditure of money and inspect the goods purchased for them; by a number of inspectors, who visit the agencies to examine into their condition; and by agents, who with the aid of teachers, mechanics, and farmers, try to promote civilization among them. The Indian schools at Hampton and Carlisle are also under the supervision of the bureau.

265. *Commissioner of Railroads.* It is the business of the commissioner of railroads to receive the reports and to examine the books and accounts of the railroads that have been aided through land grants or otherwise by the government, and to see that the laws relating to the management of those roads are enforced.

266. *Patent Bureau and Geological Survey.* The work of the patent bureau and the process by which patents are secured have been considered elsewhere (§ 173). In addition to the work of the bureaus outlined above, the department of the interior conducts also the work of the geological survey under the immediate control of an officer called a director. The work of the geological survey is to examine the geological structure and to determine the mineral resources and mineral products of the United States. The survey of the forest reserves is also conducted by this bureau.

267. Department of Agriculture. It is the business of the department in general to acquire and diffuse among the people useful information on subjects connected with agriculture. The names of some of the bureaus and divisions convey some idea of the scope of the work. There are the bureaus of animal industry, of plant industry, of forestry, and of chemistry of soils; the divisions of vegetable physiology and pathology, of entomology, of biological survey, of seeds, of botany, and of gardens and grounds; the office of public road inquiries; and the weather bureau. One of the most important services rendered by the department is that performed through the bureau of animal industry, which inspects meat intended for export, inspects live animals, both those intended for export and those imported, inspects diseased cattle, and prevents the spread of disease among cattle. The bureau of plant industry studies plant life with a view to assisting the farmer. It attempts to discover methods of improving crops, introduces new varieties of fruits and vegetables, and studies methods of controlling the spread of weeds and noxious plants. Another important branch of the work of the department of agriculture is that conducted by the weather bureau. Through its agency, daily forecasts and warnings of storms are sent all over the country, and storm signals are displayed at many points along the coasts. The department also supervises numerous experiment stations throughout the country, furnishing them advice and assistance in carrying on experiments, and suggesting lines of investigation. In Alaska, Hawaii, and Porto Rico it has established experiment stations under its own immediate direction.

268. The Department of Commerce and Labor was established by congress in 1903, and the head of the department was made a cabinet officer. Much of the work heretofore done by other departments and independent boards is now included in the department of commerce and labor. This department includes the lighthouse board, the lighthouse establishment, the steamboat inspection service, the bureau of navigation, the work of the United States shipping commissioners, the national bureau of standards, the coast and geodetic survey, the work of the commissioner-general of immigration, the immigration service at large, the bureau of statistics, the census office and all that pertains to it, the department of labor, the fish commission, and the office of commissioner of fish and fisheries. The bureaus of industrial promotion and of corporations have been created and form a part of the new department. It also has jurisdiction over the Alaskan fisheries and over Chinese exclusion.

269. *General Work of Department.* The bureau of immigration prepares and revises all regulations pertaining to immigration, decides cases as to the right of aliens to enter the country, investigates supposed violations of the alien-contract-labor laws, and supervises the work done by the inspectors of immigrants. The bureau of statistics collects and publishes annually statistics on foreign commerce. This work is extremely valuable to members of congress in the framing of tariff laws and in the preparation of special legislation for particular industries, and is also used as the basis of all our commercial treaties. The department of commerce and labor provides for the coast and geodetic survey, by which a survey of the whole coast and all har-

bors is made for the purpose of locating shoals, rocks, etc., as well as an accurate survey of land lines across the continent; for the location of suitable buoys and lighthouses to mark the dangers to navigation thus ascertained; and for the maintenance of life-saving service for the rescue of those who may be imperilled by disasters on water. This service not only covers the long line of our sea coast, but also our larger inland waters as well.

270. *The Bureau of Corporations* has power to investigate the organization, conduct, and management of the business of any corporation, joint stock company or corporate combination engaged in commerce among the several states and with foreign nations, excepting common carriers, and to gather such information and data as will enable the president of the United States to make recommendations to congress for legislation for the regulation of such commerce, and to report such data to the president from time to time as he shall require; and the information so obtained, or as much thereof as the president may direct, shall be made public.

271. Independent Boards and Commissions. In addition to the regular executive departments there have been created at different times commissions and boards, executive in character, though not connected with any of the departments. Among these are the civil service commission and the interstate commerce commission. Special officers or boards exist also for the purpose of conducting the work of the government printing office, of the library of congress, of the Smithsonian institution, of the national museum, and of the bureau of ethnology. The work of the interstate commerce commission has been already described (§156).

The civil service commission consists of three commissioners, only two of whom may be of the same political party, appointed by the president with the advice and consent of the senate. There are also a chief examiner and a secretary. It is the duty of the commission to provide for competitive examinations to test the fitness of candidates for the civil service, and to regulate and improve that service.

Library References. — Ashley, Chap. XV; Macy, Chaps. XXIV–XXV, XXVII–XXXI; Macy, *First Lessons*, Chap. XIX; Dawes, Chaps. VIII–IX; Bryce, Vol. I, Chap. IX; Fiske, pp. 244–250; Harrison, Chaps. XI–XIX; Wilson, §§ 1109–1120; Hinsdale, Chap. XXXIII; Curtis, Vol. I, pp. 574–576; Congressional Directory; Wilson, *Congressional Government*, pp. 257–275, 277–293; Dole, Chap. XIV; Lalor, Article on *State Department, Treasury Department*, etc.; Woodburn, pp. 189–193.

QUESTIONS ON THE TEXT

201. Was the cabinet contemplated by the constitutional convention, or provided for in the constitution? Discuss fully.

202. Name with their titles the persons composing the president's cabinet. How are the members of the cabinet chosen?

203. Should the cabinet officers have seats in congress? Why?

204. Mention in order of rank the officers composing the president's cabinet; in order of their creation by law.

205. Give the name and the three chief duties of the incumbent of the most important position in the president's cabinet.

206. What are the principal duties of the secretary of state? How is this office filled? Give five duties of the secretary of commerce and labor.

207. Give salary of secretary of state; of the other cabinet officers.

208. Through what department does the United States conduct its business with other nations?

209. How is the secretary of the treasury chosen? What is the length of his term of office, and what is his salary? What are the chief duties of secretary of the treasury?

210. Describe the duties of adjutant-general; inspector-general; quartermaster-general. To what department of government do they belong?

211. Describe the mode of appointment and state the principal duties of the attorney-general of the United States.

212. How many classes of mail are there? What are the postal rates for each? In which class do letters belong? newspapers?

213. What is the basis of the classification of post-offices? By whom are postmasters appointed?

214. What are the principal duties of the department of the interior? Mention the two ways of looking at the pension question as given by ex-President Harrison.

215. What is meant by preëmption of public lands? By a homestead claim? By a timber claim?

216. What direct aid has the United States government given to education in the different states?

217. Mention two duties of the commissioner of education.

218. What officer is at the head of the department of agriculture? Is he a cabinet officer?

219. What officer was last added to the president's cabinet? What is the nature of his duties?

220. What department of the cabinet has charge of taking the national census? How often and in what years is the census of the United States taken? Of the state?

221. Describe two of the executive departments of the government, giving the principal duties of each department.

222. What are the duties of the civil service commission? What is the "civil service"? What is the "spoils system"?

223. What is the chief provision of the system of civil service? Give an argument in favor of this system.

224. State which executive department of the government would consider each of the following: (1) transportation of mail; (2) dealings with the Indians; (3) collection of duties on imports; (4) negotiation of treaties; (5) violation of interstate commerce laws; (6) custom houses; (7) patents; (8) diplomatic correspondence; (9) army supplies; (10) education; (11) passports; (12) collection of revenue; (13) arsenals and armories; (14) pensions; (15) coast survey; (16) census; (17) foreign relations; (18) erection of lighthouses; (19) copyrights.

CHAPTER XIII

JUDICIAL DEPARTMENT: FEDERAL COURTS

272. Necessity of Federal Judiciary. "Laws are a dead letter without courts to expound and define their true meaning and operation." Under the confederation there existed no separate federal judiciary, and the judicial powers vested in congress were extremely limited (§§ 84, 85). It had become clear that somewhere in the nation there must exist an authority empowered to interpret the laws and treaties of the United States and to determine whether or not acts passed by congress harmonized with the fundamental law of the land as embodied in the constitution — in other words, to pass upon their constitutionality. It had become equally clear that such interpretation could not safely be entrusted to the state courts. In the first place, such an arrangement would be sure to result in a complete lack of uniformity. The same point might and probably would be decided in ways as various as the courts before which it was brought. In the second place, the state courts were unfitted for the work, both because of the nature of many of the matters in dispute, and because of the character of the parties to federal suits. Matters of a quasi-international character, such as admiralty jurisdiction, are obviously not matters to be properly adjudicated by the courts of any particular state; nor could state courts be completely trusted, because of local prejudices, to do full justice between citizens of their own states and citizens of another, or between their

own states and the federal government. Moreover, state courts, being authorities coördinate with and independent of one another, supplied no means for settling disputes between states. And finally, since the constitution and the federal laws made under it were to be applicable not to the states only but to the individual citizen as well, it was more than ever necessary that a federal judiciary be created to interpret and apply these laws.

273. The Federal Courts. Only one of the federal courts, namely, the supreme court, was directly created by the constitution. It was left to congress to provide such inferior courts as might be necessary; and accordingly, by the judiciary act of 1789, not only was the supreme court organized, but circuit courts and district courts were created and their functions were defined. Later it was found necessary to establish also a court of claims and a circuit court of appeals; so that the federal judiciary at present consists of the supreme court, the court of claims, the circuit courts of appeals, the circuit courts, and the district courts, besides a number of other courts under the control of congress but differing somewhat from the regular federal courts.

274. The Judges. If the judicial department of the government was to be made separate from and coördinate with the other two departments, it was necessary that the judges should be made as independent of them as possible. Moreover, the makers of the constitution were particularly anxious to secure the independence of the judiciary, regarding this as the surest means of safeguarding the liberties of the people from the encroachments of the legislature and the executive. Accordingly, the constitution provides that "The judges, both of the supreme and inferior courts, shall

hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office," *i.e.*, their tenure of office is a life tenure subject to removal only by impeachment, and that is a process rarely resorted to. Four times only since the adoption of the constitution has it been employed against federal judges, and only once against a judge of the supreme court. It is further provided by the constitution that judges of the supreme court shall be appointed by the president with the advice and consent of the senate; and though no distinct provision is made for the appointment of the inferior federal judges, the president appoints them under the provision of the constitution which says that the president shall appoint all officers not otherwise provided for by the constitution or by congress.

275. Jurisdiction: One Class of Cases. The constitution also defines very clearly the classes of cases over which the federal courts may exercise jurisdiction. Over some of these cases jurisdiction has been given to the federal courts because of the nature of the questions involved; over others, because of the nature of the parties to the suit. To the first class belong (1) all cases arising under the constitution, laws, or treaties of the United States; (2) all cases of admiralty or maritime jurisdiction; and (3) controversies between citizens of the same state claiming lands under grants of different states. Over cases arising under the constitution, laws, or treaties of the United States the jurisdiction of the federal courts is not exclusive, *i.e.*, such cases may be begun in the state courts; but in case the decision of the state courts is adverse to federal authority, these

cases can be finally adjudicated only by the federal courts. The reason for the rule is clear. The federal authority must be the final judge of the extent of federal powers. To give the state courts power to render final judgment in such cases would be to make them, and not the United States, the ultimate authority. Over cases belonging to classes (2) and (3) above, the federal courts exercise exclusive jurisdiction. Maritime and admiralty cases, since they affect either commerce or international relations, both of which are regulated by the United States and not by the states, and since decisions in such cases should be uniform, can be properly dealt with only by the United States courts.

276. Another Class of Cases. The cases in which jurisdiction is given to the federal courts because of the nature of the parties to the suit are the following:

(1) Cases affecting ambassadors, other public ministers, and consuls;

(2) Controversies to which the United States is a party;

(3) Controversies between two or more states;

(4) Controversies between a state and citizens of another state;

(5) Controversies between citizens of different states;

(6) Controversies between a state or its citizens and foreign states, citizens, or subjects.

In all these cases the jurisdiction of the federal courts is exclusive. As regards the first of these classes it may be said that since ambassadors, ministers, and consuls are persons having an international character, it would hardly be fitting that cases affecting them should be dealt with by state courts. Similarly, it is not in keeping with the sovereign character of the United States that it should be com-

pelled to sue or to be sued in a state court. In all the rest of these cases it was felt that a state court would be likely to be prejudiced.

277. XIth Amendment. Two of these classes of controversies, (4) and (6), have been so far withdrawn from federal jurisdiction by the passing of the XIth amendment, as to prevent a citizen or citizens of another state or foreign state from suing a state in the federal courts. These provisions were doubtless never intended to give to a private individual the right to sue a state, but rather to give to the state an opportunity to appear as plaintiff in a federal court against citizens of other states. The clause was, however, soon interpreted, in the case of Chisholm *vs.* Georgia, by a decision of the supreme court in 1793, as applying to cases in which a state is defendant also. The decision was received with disfavor and alarm by the states. It was thought that it violated the sense of dignity of a state to be dragged into court as defendant at the instance of a private individual. Accordingly, the XIth amendment was proposed by congress and duly ratified by the states. It provides that "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign state." Under this amendment some of the states have found it possible to repudiate their debts with impunity.

278. Transfer of Cases. Any case that has been begun in a state court may be transferred to a federal court, provided the defendant can rest his case on a federal law. The judiciary act of 1789 lays down the rules for thus removing a case from one court to the other. It may be done (1) if the

state court, in judging the case, has decided against the validity of a treaty or a law of the United States or some authority exercised under the United States; or (2) if the state court has decided in favor of the validity of a state law or exercise of authority as against the constitution, laws, or treaties of the United States; or (3) if the state court has decided against a privilege, right, title, or immunity claimed under the United States constitution, laws, or treaties. The reason for the rule is sufficiently clear. No state construction of a federal law can be admitted to be final, if that construction in any way abridges federal authority.

279. Treason. Besides giving to congress power to establish federal courts inferior to the supreme court, the constitution gives into its hands also the power to declare the punishment for treason. It defines treason as follows: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." While granting this power, however, the constitution takes care to safeguard the interests of the individual by imposing some limitations. It is provided that "No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court;" and further, that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted." Corruption of blood was a punishment sometimes formerly inflicted as a penalty for treason or felony. By it the person attainted was disabled from inheriting any property, from retaining any which he might possess, and from transmitting any to his posterity. In accordance with the power granted it, congress intrusts the trial for treason to a tribunal appointed by

itself and has decreed death as a punishment, or, at the discretion of the court, "imprisonment at hard labor for not less than five years, and a fine of not less than ten thousand dollars."

280. The Supreme Court, as was noted above, was directly created by the constitution, and compensation was provided for the judges; but no limitations were imposed as to the number of judges to be appointed or the amount of salary to be paid to each. These details were left to be determined by congress. The number of judges fixed by the judiciary act of 1789 was six. This number has since been increased to nine, one chief justice and eight associate justices. The chief justice receives an annual salary of $10,500, while the associates receive $10,000 each.

281. The Jurisdiction of the Supreme Court is also determined by the constitution, *i.e.*, the constitution declares in what classes of cases the supreme court has authority to administer justice. It has *original* jurisdiction (the right to entertain an action from the beginning) in all cases affecting ambassadors, other public ministers, and consuls; and in cases to which a state is a party. In other cases it has appellate jurisdiction, *i.e.*, cases may be brought before it from the inferior federal courts, or from state courts under certain conditions before described (§278).

282. The Sessions of the Supreme Court are held annually in Washington, beginning on the second Monday in October. Excepting on Saturday and Sunday, sessions are held daily from twelve to four. The room, formerly occupied by the senate, is a semicircular hall with a low, domed ceiling. Around the room runs a screen of Ionic columns, forming a loggia and supporting a gallery. In front is the bench of the

court, the chair of the chief justice in the centre, those of the eight associates on the sides. The justices appear in black gowns. The presence of at least six judges is required in order that a decision may be pronounced — a rule that doubtless delays the work of the court to some extent, but secures a thorough consideration of every case. The court goes over each case twice. First the opinion of the majority is ascertained. This is then written out by one of the judges, and is reviewed and criticised by the court before it is adopted as the judgment of the court.

283. The Circuit Courts were established by congress in accordance with the power granted it by the constitution to establish "inferior courts." The United States is at present divided into nine judicial circuits, in each of which court is held annually. To each circuit is allotted one justice of the supreme court, and each has in addition at least two circuit judges, who receive an annual salary of $6,000 each. The justice of the supreme court is required by law to attend court in each district of his circuit at least once in two years. A circuit court may be held either by a circuit judge sitting alone, or by the supreme court justice assigned to that circuit sitting alone, or by the district judge of the district in which the court is held, or by any two of them, or by all of them sitting together.

284. Circuit Court of Appeals. In addition to the circuit courts, a circuit court of appeals for each circuit was established in 1891. The judges of each circuit together with the supreme court justice of the circuit make up this court, and any two of them constitute a quorum. To this court cases may be brought on appeal from the district and circuit courts, and in some classes of cases a further appeal may be taken

to the supreme court. These courts were established in the hope of relieving the supreme court of some of its work, which had grown extremely heavy.

285. The District Courts are the lowest class of "inferior courts" established by congress. The country is divided into eighty-five judicial districts, including eleven territorial districts, each with its district court. The judges receive a salary of $5,000 per annum.

286. The Court of Claims, established in 1855, consists of a chief justice and four associate justices, each with a salary of $4,500. It holds an annual session in Washington for the purpose of dealing with the claims of private persons against the federal government. Cases may be appealed from it to the supreme court.

287. Other Courts. In addition to these inferior federal courts, congress has under its control also the court of private land claims, consisting of one chief justice and four associate justices, each with a salary of $5,000 per annum; the supreme court of the District of Columbia; and the territorial courts, whose judges are commonly appointed for only four years.

288. Marshals and District Attorneys. In order that the federal courts may execute the powers entrusted to them, there is appointed usually in each district an officer called the United States marshal, whose duty it is to execute the warrants or other orders of the district and circuit courts, and to perform duties corresponding in general to those of sheriff in the state governments. In case the marshal meets with resistance in the performance of his duty, he is entitled to call upon the citizens for assistance. If they cannot or will not help him, or if their help is insufficient, he may apply to the government at Washington for the assistance of United

States troops. Besides this federal sheriff, there is appointed usually in each district also a federal prosecutor called the United States district attorney. It is his duty to institute proceedings against all persons transgressing the federal laws. Both the United States marshals and the district attorneys are under the direction of the attorney-general as head of the department of justice.

289. The Procedure of the Federal Courts is prescribed by congress, subject only to certain limitations imposed by the constitution for the purpose of safeguarding the rights of the individual, such as the provision securing the right of trial by jury in criminal cases.

290. Defects of the Judicial System. The judicial department of our federal government has elicited more applause from critics, both at home and abroad, than has any other department. Yet it is not without its defects. It has been pointed out that in the inferior courts the salaries are in general inadequate, and that in the more populous places the staff is insufficient to cope with the business entrusted to it. Even the supreme court, much as it has been praised, has not wholly escaped criticism. It has been said of it that to a certain extent it feels the touch of public opinion — a tendency that is perhaps inevitable and not wholly to be deplored; and that it has not always followed former decisions, a course that tends to unsettle the law. Its weakest point, however, lies in the fact that congress possesses the power to change the number of judges constituting the court — a power which enables it, if it can secure the coöperation of the president, to "pack" the court. Thus, if congress and the president are determined to secure a certain decision, congress needs only to increase sufficiently the number of

judges, and the president to appoint men who will give the desired opinion, in order to accomplish their ends; but while this course is possible, it is hardly probable.

291. Excellences. On the whole, however, the excellences of our judicial system have far outweighed its defects. It has proved extremely stable; and, through the independence and superior character of the judges in even the inferior federal courts, it has done much to counteract the evils arising from the existence of an elective and ill-paid state judiciary. The supreme court has been most highly praised; and certainly its most grudging critic must admit that it has on the whole kept well out of politics, that its judges have been men of excellent legal ability and the highest moral character, that it has escaped all suspicion of corruption, and has maintained to a remarkable degree its judicial impartiality and its credit and dignity in the eyes of the people.

Library References. — Ashley, §§ 374–388, 404–406; Macy, Chaps. XIX, XXI–XXII; Macy, *First Lessons*, Chap. XX; Dawes, Chap. X; Hinsdale, Chaps. XXXIV–XXXVI, XXXVIII–XXXIX; Willson, §§ 1082–1096; Fiske, pp. 260–262; Curtis, Vol. I, Chaps. XXVIII, XXX; Bryce, Vol. I, Chaps. XXII–XXIV; Harrison, Chaps. XX–XXI; Wilson, *Congressional Government*, pp. 34–35, 37–40; Alton, Chap. XVIII; Lalor, Article on *Judiciary Treason;* Woodburn, Chap. VI.

QUESTIONS ON THE TEXT

225. Give an outline of the system of the United States courts. How are their members chosen?

226. Explain why judges enjoy longer terms of office under the constitution than officers in the executive and legislative departments of government.

227. How may judges of the supreme court be removed?

228. Mention five classes of cases in which the United States courts have jurisdiction. Define jurisdiction.

229. Define treason and give its punishment. How may a person be convicted of treason?

230. Describe the organization and state the principal function of the highest court of the United States.

231. What court decides whether a United States law is constitutional?

232. Mention two classes of cases in which the supreme court has jurisdiction.

233. What is meant by original jurisdiction?

234. In what cases has the supreme court original jurisdiction?

235. In whom is vested the power to try cases against foreign ambassadors?

236. State in regard to the judges of the supreme court, (1) number, (2) length of term, (3) salaries.

237. Who is the present chief justice of the supreme court? How long does he hold office?

238. Tell what you can of the United States court of claims.

239. Give arguments tending to establish or to controvert the following: "The constitution follows the flag."

240. Give two defects, and two points in favor of the system of federal courts.

CHAPTER XIV

THE STATES IN THEIR RELATIONS TO THE CONSTITUTION

292. Admission of New States. Even before the adoption of the constitution, the admission of new states into the union was contemplated by the general government. The ordinance of 1787 had provided for the formation of states out of the Northwest Territory and for their admission to the union on terms of equality with the original thirteen, and the new constitution contained a provision similar in character but wider in scope. It provided that "New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress." When the constitution was framed it was the expectation of the framers that all the territory then belonging to the United States would ultimately be formed into states; and the policy thus entered upon was subsequently extended to the Louisiana purchase and other early additions to the territory of the United States. Since the Alaska purchase, however, and the more recent addition of our insular possessions, serious questions have arisen in regard to the policy to be pursued. The power to admit or to refuse to admit a territory to statehood lies with congress. No community can demand admission as a constitutional right. Neither does admission depend upon population, though in general it is readily granted when the territory

possesses a population as large as that of a congressional district. Sometimes, however, for political reasons, admission is granted to a territory with a much smaller population, as was done in the case of Nevada, which was admitted with a population of only 20,000, mainly for the purpose of securing its vote for the XIIIth amendment.

293. Methods of Admission. Admission to statehood is secured by one of the two following methods: (1) Upon application of the territory, congress passes an "enabling act," authorizing the people to form themselves into a state. The governor then calls a convention of delegates to draw up a constitution, which must contain no provisions repugnant to the constitution of the United States or the declaration of independence, and which must provide for the new state a republican form of government. Sometimes, also, the enabling act has required the new state to give over to the United States all title to unappropriated public lands within the territory, to guarantee religious liberty, and to provide a system of public schools free from sectarian control. When this constitution has been ratified by the people of the territory, the act of congress becomes operative and the territory becomes a state and may elect its representatives in the usual way. (2) Sometimes, however, the territory, before applying for admission, has already elected a constitutional convention and framed a constitution. This it submits to congress for approval, at the same time applying for admission. If congress approves the constitution thus made, it passes an act accepting and ratifying it, and the territory becomes a state.

294. Guarantees to the States: Republican Government. In order to safeguard the interests of the states the constitu-

tion provides certain guarantees. First of all it is provided that the United States "shall guarantee to every state in this union a republican form of government." Since the general government was to be a federal republic, it was a practical necessity that that of the states should be of the republican type.

295. Protection against Invasion. In addition to this guarantee to the states it is further provided that the United States "shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence." The necessity of protecting the states from invasion was imposed upon the general government by another clause of the constitution denying to the states the right to maintain troops or ships of war in time of peace. In case of invasion no formal application from the state for the promised protection is necessary. The president is authorized by law to use the army and navy of the United States in such cases, or to call out the militia, without such application.

296. Against Domestic Violence. While the last clause of the above provision guarantees to the states the protection of the general government against domestic violence also, such protection is furnished only upon application of the legislature or of the executive of the disturbed state. The presumption is that every state is capable of enforcing its own laws and that the state is the best judge of its own ability or inability to do so. By the requirement that aid be furnished only on the demand of the state, the general government is deprived of all opportunity to meddle with state affairs under pretext of protecting the state. It has been decided by the supreme court, however, in a case growing

out of the Chicago riots in connection with the great railway strike of 1894, that in case such disturbances interfere with the execution of federal laws, the president may send troops to suppress them without application from the state.

297. Obligations upon the States: Public Records. While the constitution thus guarantees to the states certain privileges, it also imposes upon them certain duties toward each other. It requires that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state;" and further provides that "congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof." Legislative acts are proved or made authentic by the affixing of the seal of the state, and court records by the certificate of the judge, the signature of the clerk and the affixing of the seal of the court, where there is one. It is evident that, unless the legislative acts and court records of one state were accepted in the others, the states would soon be involved in endless confusion and litigation.

298. Privileges of Citizens. Another of the obligations laid upon the states by the constitution is that they grant to the citizens of each state "all the privileges and immunities of citizens in the several states." By this provision a state is prohibited from denying to citizens of the United States coming to it from outside its own borders any of the privileges granted to its own citizens. It must not regard them as aliens; it must not discriminate against them by legislation; it must permit them to come and go as freely, to acquire and enjoy property as freely, as it does its own citizens; it must grant them the same legal protection that it grants its own.

299. Fugitive Criminals. The constitution provides also for the return of fugitive criminals. "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." This process of securing the surrender of fugitive criminals is called extradition. The demand or requisition is addressed by the executive authority of the state having jurisdiction of the crime to the executive of the state in which the criminal is found; and it rests with the latter to determine whether the person demanded is a fugitive from the justice of the state making the demand. The requisition is made in official form, by making complaint on oath or by presenting an official copy of the indictment.

300. Limitations of State Power. In addition to guaranteeing to the states certain privileges and imposing upon them certain duties toward each other, the constitution also lays upon their powers certain limitations, denying some powers to them absolutely, others provisionally.

301. Absolute Limitations: Foreign Affairs. Thus it denies to them absolutely the power to do certain acts whose performance by the states would be a practical denial of the supremacy of the national government. It is a function of only absolutely sovereign states to enter into treaties, alliances, or confederations with other powers. To grant such a power to the individual states of the union would be to declare them independent of the general government, hence it is expressly denied to them by the constitution. So also with the right to grant letters of marque and reprisal. This is a part of the war-making power, which belongs to the

whole nation, not to any single portion of it. To grant it to the states would be to subject the whole nation to the risk of being involved in a war at any moment.

302. In the Matter of Money, also, the constitution lays upon the states certain prohibitions. It forbids them (1) to coin money, (2) to emit bills of credit, and (3) to make anything but gold and silver coin a tender in payment of debts. The power of coining money had already been granted to the general government for the sake of securing uniformity in the monetary system. To have left a like power with the states would have been to defeat that end and to leave the confusion as great as it had been before the adoption of the constitution. The other provisions in regard to money were also dictated by the experience of the framers of the constitution during the revolution and under the articles of confederation. When we were studying the condition of affairs under the confederation we saw something of the disastrous effects that followed the issue of bills of credit (promises to pay, *i.e.*, paper money) and of making such bills legal tender.

303. Personal Liberty. The constitution also denies to the states absolutely the power to interfere with the personal liberty and equality of citizens by passing any bill of attainder, any *ex post facto* law, or any law impairing the obligation of contracts, or by granting any title of nobility. All of these prohibitions except that in regard to the passing of laws impairing the obligation of contracts are laid, not upon the states only, but upon the United States as well, and we have already studied their meaning and purpose. The clause regarding the obligation of contracts, like so many others, was the result of experience. Under the confedera-

tion the power of the majority had often been used to change existing laws regulating contracts. The debtor class in particular had employed this means of escaping their burdens and had thus wrought no little injustice.

304. Provisional Limitations. Besides these absolute limitations upon the powers of the states there exist also some provisional ones. Some of these relate to matters of taxation. The states are forbidden, without the consent of congress, to lay any tax upon exports or imports except such as may be necessary in order to pay the expense of inspection. If a tax is laid and the revenue from it exceeds the expense of inspection, all such excess must be paid into the national treasury. The inspection laws of the state are, moreover, subject to the revision and control of congress. The states are likewise forbidden to lay tonnage duties (duties levied on ships according to their carrying capacity) except with the consent of congress. It will be remembered that the regulation of commerce was one of the powers given into the hands of congress. If that power of regulation were to be effective, it was necessary that the laying of import and export duties and of tonnage duties should also be under the control of that body. In the matter of war also the states are forbidden independent action except under certain conditions. They are forbidden to keep troops or ships of war in time of peace except with the consent of congress, or to engage in war, unless actually invaded or in such imminent danger that delay is impossible. The object of these restrictions is, of course, to ensure the safety of the union as against the states. Closely connected with them is the prohibition upon the states to enter into any agreement or compact with each other or with a foreign power, except with the consent

of congress, the object being to prevent any alliance hostile to the union or to the exercise of the powers delegated to the United States.

305. Doctrine of National Sovereignty. Besides stating thus distinctly the limitations, both absolute and provisional, placed upon the powers of the states, the constitution attempts to define still more clearly the relations between the state and the national government as follows: "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." Moreover, it is further provided that not only every United States officer, but every state officer as well, shall take an oath to support the constitution of the United States. This is the constitutional statement of the doctrine of national sovereignty, the doctrine of the supreme authority of the national government over every state and every individual, which was only fully established by the civil war. In interpreting it we must take into account always the fact that the national government is a government of *delegated* powers, and that "powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people."

306. Division of Powers: Reserved Powers. Let us look a little more closely into the meaning of this division of powers between the state and the national government. In modern free governments all governmental powers must be

conceived of as originating with the people. In our own system some of these powers are exercised by the state authorities, some by the national authorities. Those belonging to the states are nowhere expressly enumerated. In so far as the constitution defines them at all, it does so negatively, either by making specific grants of power to the national government, by laying express prohibitions upon the states, or by reserving certain powers to the whole people. All other powers, without definite enumeration, are reserved to the states. The powers exercised by the national authorities, on the other hand, are powers delegated by the people through specific grants; and within the sphere of the powers thus specifically granted the national authority is supreme. We have already seen that certain specific powers are prohibited to the states and that certain others are prohibited to the United States. It should be noted also that certain powers are denied to both these authorities. Thus the sovereign people in order to preserve certain rights believed to be indispensable, reserved to themselves a sphere within which neither state nor national authority can operate. There are thus two classes of *reserved* powers — those reserved to the states and those reserved to the people.

307. Concurrent Powers. Besides these reserved powers and besides those specifically granted to the national government, there should be mentioned another class of powers known as *concurrent* powers — powers that may be exercised by both state and national government. These concurrent powers arise through the fact that the mere grant of a specific power to the national government does not of itself constitute a prohibition upon the states to exercise such a power.

For example, congress has been granted the power to pass uniform bankruptcy laws and has at various times exercised this power. Several national bankruptcy laws have been passed and repealed. But the states have also possessed and exercised the power to pass bankruptcy laws which, however, cannot apply to existing contracts. To be sure, the operation of all such state laws is suspended, if, or in so far as, they are found to conflict with a national law; but upon the repeal of the national law, the state law becomes again operative, and the state retains as fully as ever its power to legislate upon the subject.

308. Classes of Powers. To sum up, we may follow Mr. Bryce in distinguishing the following classes of governmental powers in the United States:

(1) Powers vested in the national government alone;

(2) Powers vested in the states alone;

(3) Powers exercisable by either the national government or the states;

(4) Powers forbidden to the national government;

(5) Powers forbidden to the state governments.

To these might be added another class — namely, (6) powers vested in the people alone and exercisable only by the difficult process of amending the constitution.

309. Conflicts of Authority. When conflicts of state and national authority arise, it becomes the duty of the courts, and, in the last resort, of the supreme court of the United States, to define the limits of state and national jurisdiction. In making such decisions the courts have followed the rule that the state is presumed to have jurisdiction wherever its powers have not been limited by the United States constitution or its own constitution; while the national government

possesses a particular power only if it can be shown to have been granted, either specifically or by implication, in the constitution.

Library References. — Ashley, §§ 133–135, 238–246, 561–562; Macy, Chaps. XXXIX–XLI; Macy, *First Lessons*, Chap. II; Dawes, Chaps. XIV–XV; Hinsdale, Chaps. XXVII, XL–XLII, XLIV–XLV, XLIX; Fiske, pp. 253–258; Wilson, §§ 891–893; Bryce, Vol. I, Chaps. XXVII–XXX; Curtis, Vol. I, Chaps. XXVII–XXVIII, XXXI–XXXII, Vol. II, Chap. VIII; Wilson, *Congressional Government*, Introduction; Lalor, Article on *State Sovereignty;* Woodburn, pp. 77–87.

QUESTIONS ON THE TEXT

241. By what authority are new states admitted into the union?

242. Describe the process of admitting a new state into the union.

243. State and explain the restriction in the constitutional provisions for the admission of new states.

244. Give the provisions of the constitution by which no state shall pay more than its just share of taxes.

245. Give the substance of the constitutional provision regarding fugitive criminals.

246. A person having committed a crime in one state flees to another state; how may he be captured and returned? What is this process called?

247. Give the substance of the constitutional provision regarding (1) public records; (2) protection to states by the nation.

248. Mention five things that the constitution forbids a state to do.

249. Mention three important powers denied to the states, and give a reason in each case.

250. Mention two governmental powers held by the United States and prohibited to the states. Give a reason in each case.

251. Define legal tender. Is an American trade dollar a legal tender?

252. What is the provision of the constitution regarding the laying of duties on imports or exports by any state? Why is this provision necessary?

253. What prohibition is laid on the states regarding treaties? Give the reason for this prohibition.

254. "The states are forbidden to issue letters of marque, to coin money, to emit bills of credit, to pass *ex post facto* laws, or to make anything but gold and silver coin a tender in payment of debt." Explain these prohibitions.

255. Give the constitutional provision regarding powers reserved to states.

256. Mention two points of difference between the rights enjoyed by a state and the rights enjoyed by a territory.

257. Give in substance the provision of the constitution regarding the protection to states by the nation.

CHAPTER XV

THE BILL OF RIGHTS: THE INDIVIDUAL IN HIS RELATIONS TO THE CONSTITUTION

310. The Bill of Rights. When the constitution was submitted to the people for ratification, one of the chief objections raised against it was that it contained no "bill of rights," no sufficiently explicit guarantee of the rights of the individual against the encroachments of the federal power. Several of the states, while ratifying it, accompanied their acceptance with a recommendation that certain amendments be added, safeguarding the liberties of the individual. Numerous amendments were proposed by the various states, many of them covering the same ground. The first congress passed twelve, of which ten were ratified by three-fourths of the state legislatures, and were declared in force in 1791. These first ten amendments constitute our American bill of rights, so called from their resemblance to the English bill of rights enacted in 1689.

311. Restriction only upon the Federal Government. It should be noted in connection with these first ten amendments that they were designed as restrictions upon the United States, not upon the states, and that they have been so interpreted by the courts. Unless the states are specifically mentioned, it is held that the limitations imposed by the United States constitution are imposed on the national government only. Thus, if a state should by its constitution abolish the right of trial by jury, no national law,

constitutional or statute, would be brought to bear to prevent. The reason for this is clear enough, if we remember the circumstances under which the constitution came into existence. It was framed in the hope of establishing a better government than that of the old confederation, and the government created by it was the national government, not those of the states. Some of the state constitutions existed before the federal, and generally guaranteed to their citizens the rights afterwards provided for in the federal constitution by these amendments. The federal bill of rights was passed in order to secure to the citizens of the United States the rights already guaranteed to them as citizens of the states by their state constitutions; and the limitations of the federal constitution, unless otherwise expressly stated, apply to the national government and to it alone.

312. Classes of Guarantees. Let us look now a little more closely at these limitations which the people deemed it necessary to impose upon the newly formed government, in order to protect the citizen against possible encroachments upon his individual rights. They fall into three main classes: (1) provisions guaranteeing to him the right of personal liberty; (2) those guaranteeing the right of personal security; (3) those guaranteeing the right of private property.

313. The Right of Personal Liberty is secured by the several provisions of the 1st amendment. This attempts to secure, first of all, freedom of religion by providing that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." As we all know, many of the settlements in this country had been made primarily for the purpose of providing a means

of escape from the restrictions of a state church, and in such communities the desire for the separation of state and church was natural. Moreover, in view of the religious intolerance shown by many of the colonies, and the great variety of sects existing there, such a separation provided the only means of avoiding religious disturbances. The amendment also denies to congress the power of "abridging the freedom of speech or of the press." This right of free speech and of a free press is one that our nation has guarded jealously, so jealously that it may be questioned whether the right is not frequently abused. Finally, the amendment provides for securing "the right of the people peaceably to assemble, and to petition the government for a redress of grievances." This "right of petition" had been secured in England by the bill of rights of 1689. It might be supposed that the mere fact of possessing a republican form of government assured such a right to the people of the United States; but they evidently wished to make assurance doubly sure by making the provision a part of the constitution. The right of peaceable assembly was not generally recognized in Europe until a later period than that of our constitution.

314. The Right of Personal Security (to be secure from injury in body or character) is guaranteed by a number of amendments or parts of amendments. The IInd amendment secures to the people the right to keep and bear arms, the reason assigned in the constitution itself being that a well regulated militia is necessary to the security of a free state. By the IVth amendment provision is made also for security against the unwarrantable seizure of persons as well as of property. It is required that persons shall be

seized only upon warrants issued upon probable cause and supported by oath or affirmation, and the person to be seized must be particularly described. Especial pains are taken to secure to persons accused of crime every opportunity for their vindication and defense. All of the Vth amendment except the last clause, all of the VIth amendment, and all of the VIIIth are devoted to the provision of such guarantees. Unless the person accused is a member of the army or of the navy or of the militia in actual service, he can be held to answer for a capital or otherwise infamous crime only on the indictment or presentment of a grand jury.[1] If the penalty endangers life or limb, he cannot be tried twice for the same offense. He cannot be compelled to be a witness against himself, and he cannot be deprived of life, liberty, or property without due process of law. By the VIth amendment it is provided that the accused shall be given a speedy public trial by an impartial jury of the district in which the crime was committed; he must be informed as to the nature and cause of the accusation; he must be confronted with the witnesses against him; he must be permitted to compel, if necessary, the

[1] A grand jury consists in most of the states of from 12 to 23 men, chosen by lot in every district to inquire into all the offenses committed in the district since the meeting of the last grand jury. Usually cases are brought before it by a public prosecutor, who formally charges certain persons with particular crimes. If the grand jury thinks the evidence against an accused person sufficient to warrant a trial, it returns an indictment (a written accusation presented by a grand jury under oath, and upon the suggestion of the public prosecutor, to a court having jurisdiction of the offense charged therein) or a presentment (a written accusation presented by a grand jury upon its own motion, from its own knowledge or upon evidence laid before it). When an indictment has been found, the accused is given a copy of it and allowed time to prepare his defense. If he is unable to pay for counsel, the judge must appoint one, whose services are paid for out of the public treasury.

attendance of favorable witnesses; he must be permitted to secure or must be given the assistance of counsel for his defence. Finally, by the VIIIth amendment the requirement of excessive bail, the imposition of excessive fines, and the infliction of cruel and unusual punishments are forbidden.

315. The Right of Private Property is likewise guaranteed by several of these amendments or by parts of them. One of the annoyances to which the colonists had been subjected by the British government was the "billeting" of soldiers upon them. It was probably this experience that suggested the IIIrd amendment, by which it was provided that no soldier should be quartered in any house in time of peace without the owner's consent; nor in time of war, except in a manner prescribed by law. The IVth amendment also, which, as we have already seen, provides against the unwarrantable seizure of persons, makes provision likewise against unreasonable searches or seizures of property, by requiring that searches be undertaken only on warrants issued upon an oath attesting a cause and describing the place to be searched and the things to be seized; while the last clause of the Vth amendment provides that no private property shall be taken for public use without just compensation. Finally, by the VIIth amendment it is provided that in civil suits, where the value in controversy exceeds $20, the right to trial by jury shall be preserved; and any reëxamination of a case thus tried must be conducted according to the rules of the common law.

316. General Guarantees. It would seem as if the above provisions, together with similar ones contained in the constitution as originally adopted, must furnish ample security

for the rights of the individual; but in order to deprive the federal government still more completely of any possible opportunity to encroach upon them, there was added the IXth amendment, declaring that "The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people;" and the Xth, already considered elsewhere (§ 306), by which all powers not delegated to the United States nor prohibited to the states, are reserved to the states or to the people.

Library References. — Ashley, §§ 554–560, 571–573; Macy, pp. 30–31; Dawes, Chaps. XI–XII; Curtis, Vol. I, Chaps. XXXIV–XXXV, Vol. II, Chap. VI; Fiske, pp. 269–270; Hinsdale, Chap. XLVII; Montgomery, pp. 221–222; Lalor, Article on *Bill of Rights;* Woodburn, pp. 84–85.

QUESTIONS ON THE TEXT

258. Define a bill of rights.

259. What provision is there in the constitution regarding freedom of speech and of the press? Discuss briefly the reasons for this provision. Is it likely to be abused? How?

260. State the substance of that provision of the constitution which insures religious freedom.

261. Give in substance that provision of the constitution that secures (1) personal liberty; (2) protection to private property.

262. What rights are secured by the constitution to persons accused of crime?

263. What provision is made for trial by jury in civil cases?

264. What does the constitution provide with reference to search warrants? Explain the importance of this provision.

CHAPTER XVI

MISCELLANEOUS PROVISIONS

317. The Public Debt. We have still to consider a few miscellaneous provisions of the constitution not studied in the preceding chapters. Of these, two concern themselves with the national debt, one forming part of the constitution as originally adopted, the other forming part of the XIVth amendment. By the first it was provided that all debts contracted before the adoption of the constitution should be as valid against the United States under the constitution as under the confederation. In this provision the framers of the constitution were merely declaring their adherence to the generally accepted principle of public law that a nation does not invalidate its debts or other contracts by changing the form of its government; but the measure doubtless tended in no small degree to inspire confidence in the new government. The other provision of the constitution dealing with the public debt grew out of the civil war. It constitutes the fourth section of the XIVth amendment and provides that "The validity of the public debt of the United States . . . including debts incurred for payment . . . for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void."

In other words, the United States assures the validity of all debts incurred in the suppression of the rebellion, but refuses itself to pay and requires the states to refuse to pay any incurred in support of the insurrection.

318. Ratification. The VIIth and last article of the constitution proper provided for its ratification. Conventions were to be called in the various states for the purpose of ratifying the instrument, and the acceptance of nine states was to be sufficient for its establishment between those states. We have already seen something of the difficulties in the way of ratification and of its ultimate accomplishment (§§ 105–106).

319. Amendment. One of the conditions indispensable to the permanency of a constitution is a provision for its own amendment. States grow and change; and unless their constitutions, particularly if they are embodied in written documents, provide some means by which they can be made to conform in an orderly way to the altered conditions, the only recourse is to revolution, peaceful or otherwise. One of the chief defects of the articles of confederation, it will be remembered, was the practical impossibility of amending them. Profiting from their experience with them, the delegates to the constitutional convention attempted to provide a method of amendment which should be thoroughly practicable, and should yet be difficult enough to prevent hasty and ill-considered changes.

320. Possible Methods. As finally provided by article V of the constitution, amendments may be both proposed and ratified by two methods. They may be proposed either (1) by a two-thirds vote of both houses of congress, or (2) by a convention summoned by congress at the request of the

legislatures of two-thirds of the states. They may be ratified either (1) by three-fourths of the states through their state legislatures, or (2) by three-fourths of the states through conventions specially called for the purpose. It is left with congress to propose the method of ratification to be followed. Some restrictions were laid upon this power of amendment, however. The clauses in regard to the importation of slaves and the laying of direct taxes were not to be affected by amendment; and it was further provided that no state should be deprived of its equal suffrage in the senate without its own consent.

321. Method Used. Up to the present time all amendments to the constitution have been proposed and ratified by the first of the two methods described above, *i.e.*, congress has framed and proposed the amendments and the state legislatures have ratified them. No special conventions have ever been summoned for either purpose. The consent of the president to a constitutional amendment has been held by the supreme court to be unnecessary on the ground that "an amendment . . . is an act in constitution-making and does not come within the provisions of the constitution investing the president with a negative." [1]

322. Existing Amendments. The number of proposed amendments that have been brought before congress for its consideration is very large, but only nineteen have ever received the necessary two-thirds vote and been submitted to the states. Of these, fifteen only have been ratified and become part of the constitution. These fifteen may be divided into three groups. In the first of these groups we find the first ten amendments, the bill of rights, whose origin and

[1] Woodburn, p. 154.

purpose have been already discussed (Chapter XV). They are hardly to be considered as true amendments to the constitution. They "ought to be regarded as a supplement or postscript to it, rather than as changing it." In the second group we find the XIth and XIIth amendments, which, though they deal with quite different subjects, may really be classed together, since both are attempts to correct minor defects that have become apparent in the actual working of the constitution. These two amendments have also been discussed in connection with the matters with which they deal (§§ 226, 277). To the third group belong the last three amendments (XIII, XIV, and XV), which grew out of the civil war and which register in the written constitution the political results achieved by that struggle.

323. XIIIth Amendment. These three amendments we have not before considered. It should be noted in regard to them that they were ratified under very unusual circumstances and cannot be regarded as the free expression of the then existing desires of three-fourths of the states. By the XIIIth amendment slavery, except as a punishment for crime, is abolished in the United States and in all places subject to their jurisdiction. By the emancipation proclamation freedom had been granted to all slaves in the states then in rebellion, but that did not include all the slave-holding states, and in certain places slavery could still claim a legal right to existence. The ratification of the necessary number of states was obtained in 1865, and in December the amendment was declared a part of the constitution.

324. The XIVth Amendment was a part of the plan of reconstruction entered upon at the close of the war. It was proposed by congress in 1866 and declared in force

two years later. It defines citizenship by declaring that it is possessed by all persons born or naturalized in the United States and subject to the jurisdiction thereof, thus making the freed slave a citizen. It forbids the states to make any laws abridging the privileges of citizens, depriving any person of life, liberty or property without due process of law, or denying to any person the equal protection of the laws — provisions likewise intended primarily to secure federal protection for the freedman. By section 2 of the amendment an attempt was made also to secure political rights for the negro, by providing that any state denying to male citizens twenty-one years old the right to vote should have its representation in congress cut down in proportion to the number of citizens thus debarred from voting. This provision has never been made effective. The amendment also imposed some political disabilities upon certain classes of participants in the war. All state or United States officers who had taken part in the rebellion were rendered incapable of further office-holding until such disability should be removed by congress. An act of 1898 finally removed the last disability imposed by this section.

325. By the XVth Amendment, proposed by congress in 1869 and declared in force a year later, a direct attempt was made to secure full political rights for the negro. It had become clear that the indirect plan embodied in the second section of the XIVth amendment was destined to remain ineffective for a long time, if not forever. The XVth amendment provided that the right of citizens to vote should not be abridged on account of race, color, or previous condition of servitude. The wisdom of the policy that dictated the amendment has been much discussed. Like the second

section of the XIVth amendment, it has proved ineffective; for wherever the political consequences of the negro vote have been unpleasing to the white citizens, the states have found means of suppressing it.

Library References. — Ashley, §§ 116, 212, 248–249, 253, 277; Dawes, pp. 413–417; Hinsdale, Chaps. XLIII, XLVI, XLVIII; Fiske, pp. 269–270; Wilson, §§ 1045–1046; Bryce, Vol. I, Chaps. XXXII; Curtis, Vol. I, Chap. XXXII, Vol. II, Chaps. XI–XII; Lalor, Article on *Constitution;* Woodburn, pp. 154, 338, 356.

QUESTIONS ON THE TEXT

265. In what two ways may amendments to the constitution be proposed? State one mode of ratification of an amendment.

266. How long after its adoption before any amendments were made to the constitution? Give the substance of any of these amendments.

267. How many amendments have been made to the constitution? Explain the purpose of the last three amendments.

268. What amendments are included in the "bill of rights"?

269. What are the principal provisions of the amendments of the constitution which have been adopted since the close of the civil war?

CHAPTER XVII

THE UNWRITTEN CONSTITUTION

326. Development of the Unwritten Constitution. In the foregoing description of our national government reference has more than once been made to the existence of well-established political institutions and usages for which our written constitution makes no provision, but which have nevertheless become as fixed a part of the governmental machinery as have any of the institutions provided for by the written instrument. Such institutions and usages exist by the law of the unwritten constitution. In an earlier chapter (§ 42) it was pointed out that constitutional government may exist as well under an unwritten constitution — a constitution consisting of a mass of well-established precedents, usages, and statutes — as under a written one, in which such fundamental laws find expression in a single written document. Not only is this true, but it should be noted also that wherever a written constitution remains long in use without undergoing more or less extensive revision, it does so by virtue of the fact that there grows up beside it or within it an unwritten constitution, changing and expanding with the needs of the nation living under it. This unwritten constitution has been called the flesh and blood of the constitution rather than its skeleton. Such a growth has taken place in the United States. Our real constitution to-day consists not only of the document so carefully elaborated by the convention of 1789, but of numerous judicial

decisions, legislative acts, and political customs, which have originated in attempts to interpret or supplement it. Thus, while our constitution has undergone very little change by way of amendment or revision of the written document, it has, by means of its unwritten portion, readily adapted itself to the ever changing needs of a rapidly expanding people.

327. Original and Inherent Powers. One of the most important changes brought about by the growth of our unwritten constitution is the enlargement of the powers of the national government. It has been frequently averred that our national government is one of strictly enumerated powers; that it can do only those things which it has been given the right to do by an express grant of power, or at most by implication. This is unquestionably what the makers of the written constitution intended. As a matter of fact, however, the national government does exercise other powers than those expressly delegated to it or implied in the exercise of its delegated powers. In other words, the national government exercises not only *delegated* and *implied* powers, but *original* and *inherent* powers as well; and the exercise of such powers has been held by the courts to be constitutional. In making the Louisiana purchase, and in passing the legal tender acts of the civil war, the national government was exercising powers neither delegated to it by the constitution nor clearly implied in such grants of power as it had received. A more recent example of the exercise of original powers by the national government is to be seen in the acquisition of territory as a result of the Spanish-American war and in the establishment of governments for the acquired territory.

328. Presidential Electors only Party Agents. Other instances of practices and precedents that have all the force of constitutional provisions have been noticed in the preceding pages, but may be briefly recalled here. In our discussion of the electoral college the fact was noted (§ 229) that presidential electors are required by party custom to vote in the electoral college for the candidates selected by their party at the nominating convention and at the polls. This custom, though it does not transgress the letter of the written constitution, nevertheless defeats the purposes of the framers in creating the electoral college. It was intended that this body should be made up of men versed in public affairs and acquainted with the merits of public men, and that it should exercise a wise discretion in its choice of the chief executive. In the first two presidential elections this ideal was more or less fully attained, though even in the second election party influence began to make itself felt in the selection of the vice-president. There was a somewhat general expectation at least that for vice-president the federalists would vote for John Adams and the antifederalists for George Clinton. By the time of the third presidential election party organization was sufficiently developed and party influence sufficiently strong to control the votes of most of the electors; and by the time of the fourth it had become so clearly understood that the elector's duty was merely to ratify his party's choice, that the struggle centred about the formally nominated candidates for president and vice-president rather than about the electors. Gradually the elector lost every vestige of the discretionary power with which the framers of the constitution had intended to endow him and became the merest party agent.

It is conceivable that an elector might be found rash enough to exercise his undoubted legal right to vote contrary to the wishes of those who elected him, and no legal penalty could be inflicted upon him; but such a course would mean for him political suicide. He would be looked upon as having betrayed a public trust and as deserving of the severest condemnation. No provision of the written constitution is more strongly safeguarded by the support of public sentiment than is this unwritten law requiring the elector merely to register the vote of his party.

329. Reëligibility of the President. Another unwritten rule that has come to have in practice the force of constitutional law is the rule limiting the reëligibility of the president. The written constitution sets no limit. The existing rule that the president shall be reëlected but once had its origin in the example of Washington. At the close of his second term he expressed his intention of declining reëlection on the ground that the unlimited reëligibility of the president was not in keeping with republican institutions. He deemed it advisable to set the limit at two terms. Jefferson, who might also have been elected for a third term, followed the example of his predecessor; and public opinion set the seal of its approval upon the custom so strongly that few serious attempts have been made to elect a president for a third term. An attempt in the republican convention of 1880 to renominate Grant for a third term failed in spite of his popularity with his own party, and the decision there rendered has up to the present time been accepted as final. To be sure, the election of a president for a third term is quite within the bounds of possibility, and, if it should occur, would have to be regarded as a

repeal of the unwritten rule against it; but so long as the rule commands the support of public opinion it must be regarded as a part of the unwritten constitution.

330. Custom and the President's Power of Removal. It is by a rule of the unwritten constitution also that the president possesses the power to remove, without the consent of the senate, officers appointed by him with the advice and consent of that body. The written constitution does not provide for the removal of officers except by the process of impeachment.[1] It is obviously necessary that there shall reside somewhere the power to remove incompetent or unfit officials whose offences fall short of actual violations of law. A debate upon the question as to where such power should be lodged arose in the first congress in connection with a bill for organizing the first departments. It was held by some members that the consent of the senate was necessary for removal as well as for appointment; by others that the power of removal should belong to the president alone. Congress adopted the latter view, and it was not until President Jackson's abuse of the power revealed its possible danger that the wisdom of this construction of the constitution was seriously questioned. Even then no legislative action was taken, and it was only when the conflict with President Johnson arose that congress made any attempt to interfere with the president's power of removal. By the tenure of office act passed in 1867 the consent of the senate to the removal of presidential appointees was made necessary, and thus the construction of the constitution adopted by the first congress was set aside. But it was not

[1] Art. I, Sec. 5 of the constitution provides that either house may expel a member by a two-thirds vote.

for long. Just a month after the inauguration of the next president came the repeal of all those provisions of the act that interfered with the president's power of removal, and in 1886 what was left of the act was repealed. "It is now generally held by publicists of both parties that the Tenure of Office Act was unconstitutional and would have been so held by the courts if it could have been tested." [1] Since its repeal there has been practically no question that the power to remove appointees without the consent of the senate is one of the president's constitutional prerogatives.

331. The Senate and the President's Nominations. Closely allied with this unwritten rule in regard to the president's power of removal is another touching the matter of appointments. In accordance with this rule the senate invariably confirms the president's nominations for cabinet officers. The control of other presidential appointments has passed very largely into the hands of the senate. It confirms or rejects them on any ground it chooses — for party reasons or for even less commendable ones. Not so with the cabinet; the president is allowed a free hand in the choice of his immediate assistants, and the senate confirms his nominations without question. It is, of course, conceivable that the president might make a nomination so obviously unfit that the senate would reject it; but such a nomination is very improbable.

332. The Cabinet and the Unwritten Constitution. This custom of unquestioning confirmation by the senate of cabinet nominations finds its justification in the character and function of the cabinet itself. The nature of this body as it exists to-day and its relation to the president and to con-

[1] Woodburn, p. 189, text and note.

gress are matters governed entirely by the law of the unwritten constitution. Its function and its relation to other branches of the government have been already discussed (§§ 245–246); but it should be noted that in the cabinet we have a political institution of very great importance which is not only regulated by the law of the unwritten constitution, but is indeed a creation of it.

333. The Committee System. Another important political arrangement which has become a part of our constitution, though the makers of our written constitution did not foresee it or provide for it, is the committee system by which congress accomplishes its work. The system grew up as the easiest and most natural method of solving the problems confronting the first congress. Congress, unlike the British parliament, had no official leaders charged with the duty of preparing measures and presenting them for its consideration. That duty belonged to the whole body, which soon found that the most effective method of accomplishing its work was by dividing it among the members. At first measures were usually debated in committee of the whole, and then there was delegated to a special committee the task of preparing a bill in accordance with the conclusions reached in the debate. As time went on permanent committees were appointed to deal with certain regularly recurring lines of business, and thus was gradually developed the extensive and complex committee system of the present, whose working we have already studied (§§ 198–200).

334. Finally, our whole System of Party Government, so important a part of our real constitution, has developed under the guidance of unwritten law. Our written constitution nowhere contemplates such a system, and its growth

has wrought profound changes in the character of our government. The president, who was intended to stand outside of and above all parties, has become avowedly a party leader. The speaker of the house of representatives, whom the constitution barely mentions and who was intended to act merely as a presiding officer, has come to wield tremendous influence over the course of legislation. The development of the party caucus, of the party convention, of our whole elaborate party organization and machinery, though not in contravention of the letter of the written constitution, is nevertheless contrary to the wishes and expectations of the framers of that instrument. All these established institutions, usages, understandings, form parts of our unwritten constitution. If the student is to arrive at any adequate conception of the true nature of our government he must not lose sight of the existence of this ever changing unwritten constitution side by side with the written instrument under which it has grown up.

Library References. — Ashley, §§ 229–230; Bryce, Vol. I, Chap. XXXIV; Woodburn, pp. 86–93; Hildreth, Vol. IV, p. 105 ff.; Curtis, Vol. II, Chap. III; Tiedeman, *Unwritten Constitution of the United States;* also, see Library References for Chapter VII.

QUESTIONS ON THE TEXT

270. State one objection to an unwritten constitution as a basis of national government.

271. Is it the written or the unwritten constitution which determines the following: (1) no state has a right of its own motion to secede from the union; (2) presidential electors are expected to vote for their party nominee? Give reasons for your answer.

272. What determines that a member of the federal house of representatives shall reside in the district from which he is chosen? Give reasons for and against this practice.

273. How is the real business of the federal senate and house of representatives conducted? Explain the system. How did it come to be established?

274. The members of the various committees in the federal senate are elective. What is the practice in the house of representatives? Explain.

275. How may a party caucus in congress determine legislation? Are the members of the party bound by the action of the caucus? Is this phase of our government a matter of the written or unwritten constitution? Explain.

276. Under our written constitution, has the federal government the right in matters essentially national to exercise such original and inherent powers as belong to a sovereign state? Explain.

277. What is meant by "senatorial courtesy"? How far is it applied in the matter of presidential appointments? Explain.

278. By whom are the presidential appointees removable? Is this matter determined by constitutional provisions? Explain.

279. How was the cabinet created? What regulates its action and its relation to the president and to congress? Discuss fully.

280. What penalty is inflicted for violations of the provisions of the unwritten constitution? What would happen, for instance, if a presidential elector should vote contrary to the wishes of his party, or a member of congress to the decision of his party caucus?

CHAPTER XVIII

STATE GOVERNMENTS

335. In our study of the federal constitution we have already considered the relation of the states to the national government (Chapter XIV). We must now attempt to outline in a general way the government of the states themselves.

336. National Expansion since 1789 has been very rapid. Since that date there have been added to the union 32 new states with an area of 2,393,715 square miles and a total population, according to the last census, of almost 46,000,000. The area of the original thirteen is but 325,065, and their present population about 28,700,000. "Westward," indeed, "the march of empire takes its way," and the power which New England and her sister states once exercised in politics is now shared with, if not entirely transferred to, the great states of the Mississippi valley and of the far west.

337. Diversities and Uniformities among the States. When we consider how dissimilar are the elements that compose our population, how great the extent and how varied the character and climatic conditions of the territory over which that population is spread, and finally, how large a measure of political independence is left to the states by the federal constitution, we might expect a much wider diversity of political arrangements between the states than actually exists. Diversities there are, to be sure, but they are in matters of detail. In general outline the governments of

these forty-five great commonwealths are surprisingly alike. This similarity must be attributed in part to direct copying of portions of the constitutions of the older states by the newer ones; in part to the constant movement of population, which tends to prevent the growth of local peculiarities; in part to the influence of railways, newspapers, and telegraphs, which tends in the same direction; in part to the absence among the newer states of both natural and historical boundaries and of separate traditions. In all the states we shall find written constitutions, which provide systems of government alike in all essential particulars.

338. Origin of State Constitutions. The state constitutions are the direct descendants of the royal charters under which the early English settlements in America were made. From the beginning the English colonists in America were accustomed to the idea of a fundamental law, usually written, which created for them a frame of government, and which emanated from an authority superior to the ordinary law-making power in the colony. This superior authority resided at first in the British crown or in the crown and parliament; but when the colonies became independent commonwealths it passed over, not to the legislatures, but to the people of the newly created states. In the ten colonies that were either proprietary governments or royal provinces (§§ 49–50) it was deemed necessary to frame new constitutions or to make considerable alterations in the old ones; but in the three charter colonies (§ 48), viz., Massachusetts, Rhode Island, and Connecticut, the colonial charters were made to serve as state constitutions with only such changes as were made necessary by the substitution of the authority of the people for that of the crown. We have already seen

how largely the federal constitution was influenced by the preëxisting state constitutions. As might be expected, it has in its turn influenced the constitutions of states admitted to the union since its adoption; but still more have they been influenced by the constitutions of the older states from which the settlers of the newer states have come. The original constitutions of the first thirteen states, as well as the constitutions of the newer states, have been not only frequently amended but even entirely remodelled, so that the constitutions now in force in the several states date from all periods of our history.

339. Methods of Constitution-Making. At first state constitutions were formed either by the legislatures or more commonly by special constitutional conventions. These conventions were rarely required to submit their work to the people for approval; they were empowered not only to draft but also to adopt the constitution. Up to 1810 only three out of the twenty-five constitutions adopted had been submitted to the voters for ratification. Gradually these methods have been superseded by another. In practically all the states, constitutions are now framed by specially elected conventions, whose work is then submitted to the voters for ratification or rejection.

340. The Present Process. In detail the present process of forming a state constitution is practically as follows: A resolution is passed, in some states by a two-thirds vote, in others by a majority vote of the members of the state legislature, calling for a constitutional convention. If, at the next election, the voters signify a desire for revision of the constitution, another resolution of the legislature prescribes the number of members for the convention, the election dis-

tricts, and the mode of election. When the convention has met and finished its work the new draft is submitted to the people for ratification, though only one-third of the states require such popular sanction. Usually it is accepted or rejected as a whole, though extra clauses on certain subjects are occasionally voted upon separately. In some states constitutional revision is required at stated intervals.

341. Constitutional Amendments. If, instead of general revision, certain specific amendments to the constitution are desired, such amendments are first proposed by the state legislature. In a few of the states the proposal for amendment may be passed by a mere majority of the members of the legislature; others require a three-fifths vote, others a two-thirds vote, while still others require that the proposal be passed by two successive legislatures by votes varying in different states from a majority to three-fourths of the members elected. After the proposed amendments have been passed by the requisite majorities they are submitted to the people for ratification, and in this popular vote likewise special majorities are required by the different states. While the process of amendment may seem at first sight somewhat difficult, it has not been found so in practice. Constitutional changes in the states have been made frequently — too frequently, some critics believe. The fact that the more recent constitutions require the consent of only one legislature rather than of two successive ones to a proposed change, would seem to indicate a tendency to make the process a shorter and thus an easier one. When we come to consider the contents of state constitutions, we shall see that they deal in the most detailed manner with a great variety of matters, many of which are of such a character that laws

concerning them must be subject to somewhat frequent alteration: hence, constitutional revision is probably no more frequent than is necessary.

342. Contents of State Constitutions: Historical Changes. The earlier state constitutions were brief, usually containing little more than a bill of rights and a frame of government. As might be expected in the case of governments formed under revolutionary influences, the new governments consisted of a strong legislature, a comparatively weak executive, and a carefully organized and independent judiciary. As revolutionary influences died away there followed a second period in the history of constitution-making, lasting from about 1800 to the civil war. In the constitutions of this period the political tendency of the time toward democracy is clearly manifest. Over a large part of the country it becomes an established principle that constitutions shall be enacted by popular vote. The suffrage is widely extended until it becomes practically manhood suffrage, except, of course, in the case of the negro. The legislature begins to be regarded as a mere body of agents to whom are intrusted no very large discretionary powers, and who must apply to the sovereign people for any extension of their powers. Very significant is the increasing length of the constitutions of this period, due to the incorporation of a mass of provisions differing from ordinary statutes only in having been enacted directly by the people instead of the legislatures. The constitutions enacted since the civil war have shown a slight reaction against the democratic tendencies of the earlier period. There has been a disposition to strengthen the executive and judicial departments of the government, and to curtail the power of the legislature both by laying restric-

tions upon it and by resorting frequently to direct legislation by the people.

343. Existing State Constitutions usually contain a definition of the boundaries of the state, a bill of rights, and provisions for the establishment of the three departments of government with their officers and functions together with regulations concerning the suffrage. In addition to these more essentially constitutional provisions, there occur a great number of miscellaneous provisions dealing with matters which properly belong to the domain of ordinary law; *e.g.*, articles concerning taxation, education, local government, corporations, public lands, the administration of the state debt, the management of public institutions, the sale of intoxicants, and many others. These later constitutions, moreover, not only cover this great variety of subjects, but they deal both with these and with the properly constitutional provisions, in much greater detail than was attempted in the earlier ones. Doubtless the principal motive in thus crowding into the constitutions much that might better take the form of laws on the statute books is popular distrust of the legislatures and consequent desire to legislate directly upon certain important subjects.

344. The State Governments. In every state the government is divided into the three departments — legislative, executive, and judicial. The state legislatures are all bicameral, the smaller house being termed in all states the senate, the larger usually the house of representatives, though in six states it is known as the assembly, in three as the house of delegates. The state executive consists of the governor and a number of other officials. The state judiciary consists of at least one state court with a number of minor courts.

345. Suffrage and Elections. Although in most of the states the suffrage approaches very nearly to universal manhood suffrage, still the qualifications are by no means uniform. Most of the states demand that the voter shall be of the male sex, twenty-one years of age, and a resident of the state for a certain length of time, and that he shall not be a criminal or a pauper. Beyond this the qualifications vary widely. In Wyoming, Colorado, and Utah women are allowed to vote. A majority of the states demand that the voter be a citizen; in others no such qualification exists, or a simple declaration of intention to become a citizen is sufficient. Mississippi, Massachusetts, Connecticut and Delaware impose an educational test, requiring the would-be voter to read or to read and write. In Idaho the suffrage is denied to polygamists. Some of the states require that the voter register his name and certain other facts before he can vote. The reasons for the sex and age requirements are obvious. The residence qualification, if carried to the length it is in New York state,[1] tends not only to prevent repeating (voting more than once) at the ballot box but to secure from the voter some familiarity with local conditions before he casts his vote for a local officer. Citizenship, presupposes a certain interest in the affairs of a state which may, perhaps, not exist in the alien voter. In the more thickly settled districts, particularly in the cities, registration has been found a helpful means of combating the evil of repeating.

346. The Voting is usually done on a single day between sunrise and sunset. For the election of United States officers a uniform day has been fixed by law, viz., the first Tuesday

[1] The state constitution demands residence in the state for one year, in the county for four months, and in the election district for thirty days.

after the first Monday in November. Polling places are provided in charge of officers prescribed by state law. The voting is by ballot or by voting machines. Most of the states have adopted the Australian system of balloting, or some modification of it, in order to secure secrecy. By this system the voter, having been given an official ballot printed by the state and containing in parallel columns the names of all the candidates to be voted for at that election, with the party emblem, a circle, and the name of the party at the top of each column, enters a closed booth or room, alone. If he wishes to vote for all the candidates of his party (*i.e.*, a "straight ticket"), he places a mark in the circle at the top of the column containing their names. If, on the other hand, he wishes to vote for one or more candidates from other parties than his own (*i.e.*, a "split ticket"), he places a cross opposite the name of each candidate for whom he wishes to vote. He then hands the ballot to the proper officer for deposit in the ballot box. If the officer in charge of an election, or even a bystander, thinks that the voter does not possess the necessary qualifications, he may question his right to vote. This is called "challenging." The person challenged must then "swear in his vote," *i.e.*, take an oath that he is entitled to vote at that election. In New York illegal voting is punishable by a period of imprisonment from three months to a year in length, and for certain offences of this nature an additional penalty is provided depriving the convicted person of the right of suffrage for a period of five years after conviction. In New York also and in Florida betting on elections is forbidden by law.

347. Election. After the election the voting places are closed and the election officers count or canvass the votes.

If the number of ballots does not agree with the list made of the voters, then it is the custom to draw out of the box the number in excess. Sometimes, especially when voting for the officers of the larger divisions of the state, as the county, congressional district, or state, the votes are canvassed by two or three sets of officers. In most of the states a plurality only is necessary for an election. By plurality is meant the excess of the number of votes cast for the leading candidate over those cast for each of his competitors in cases where there are more than two candidates and no one receives a majority of the votes. Thus, if A gets 450, B 300, and C 250 votes, out of a total vote of 1,000, A is said to have a plurality over his competitors. In most of the New England states a majority — *i.e.*, at least one over half of the total number of votes cast — is necessary to elect. It very often happens that a person is elected on a plurality vote who is really the choice of but a small part of the voters; on the other hand, under the New England system it may be necessary to resort to a new election, no candidate having the necessary number of votes for a choice.

348. The Legislature: Organization. The members of both houses of the state legislature are chosen by popular vote, usually from districts equal in number to the members of the respective houses. The basis of representation, therefore, does not differ in the two houses except that the senators are elected from larger districts. Otherwise the houses differ merely in the number of members, the length of term and their special duties. The state senates now consist on the average of about thirty members. Nevada has the smallest senate, numbering fifteen members; Minnesota the largest — sixty-three. In most of the states the term of the senator

is longer than that of the representative, ranging from two years to four. In most of the states also the senate is only partially renewed at each election, so that this body possesses a continuity which the other house lacks. Some of the states also fix a higher age qualification for the senator, and until 1897 Delaware imposed a property qualification.

349. The Lower Houses are in general about three times as large as the senates, but the size of the houses varies greatly from state to state. In the west and south the houses are generally smaller than in the other states, particularly in New England, where the stronger local sentiment demands representation for smaller districts. The length of term varies from one year to four, most of the states electing for two. Except for a lower age qualification and a shorter period of residence for representatives, the qualifications for members of the two houses are essentially the same. The requirement that both senators and representatives shall be residents of the districts from which they are elected is made in some states by the constitution, and everywhere by custom.

350. Sessions. In most of the states the sessions of the legislature are biennial. Only six states (Massachusetts, New York, New Jersey, Rhode Island, South Carolina, and Georgia) now hold annual sessions, among them, naturally, those which hold annual elections for members of the legislature. In most states also the length of the session is limited, usually to sixty days, but in three states (South Carolina, Wyoming, and Oregon) to forty. The governor may, however, convene the legislature in extra session, either on his own initiative or at the request of a certain proportion of the members.

351. Procedure. In organization and procedure the state legislature is very similar to the national. The lieutenant-governor, wherever provision is made for such an officer, is the presiding officer of the senate. The speaker, as the presiding officer of the house is called, is chosen by the members. In most of the states a majority of the members of each house constitutes a quorum. As in the national legislature, there are regulations securing to the members freedom of speech in the house and exemption from arrest during the session, providing for the expulsion of members by a two-thirds vote, for adjournment, for the keeping of journals, the judging of elections of members, the reading of bills, etc. The committee system is in use in all the states, and in most of them measures must be approved by at least one-half of all the members of both houses before they are submitted to the governor.

352. Restrictions on Powers of Legislatures. We have already seen (§§ 305–307) that under the federal constitution the states possess all those powers not delegated to the United States by the constitution nor prohibited by it to the states. The powers of the states are not, like those of the national government, delegated powers, nor do any of the state constitutions expressly delegate powers to their legislatures. Except where specific limitations have been imposed upon it, the state legislature has power to deal with any subject coming before it. The people of the states have, however, shown a growing jealousy of the powers of their legislatures by placing upon them various important limitations and prohibitions. Upon certain subjects, varying from state to state, the legislatures are forbidden to pass any measures at all. Mr. Bryce classifies these forbidden meas-

ures as follows: (1) statutes inconsistent with democratic principles, *e.g.*, granting titles of nobility or creating a property qualification for suffrage or office; (2) statutes against public policy, *e.g.*, tolerating lotteries, impairing the obligation of contracts, etc.; (3) statutes special or local in their application; (4) statutes increasing the state debt beyond a certain limited amount, or permitting a local authority to increase its debt beyond a prescribed amount. In addition to these prohibitions upon legislation, the constitutions impose also a number of restrictions as to the treatment of bills, the majorities necessary to pass certain bills, the method of voting, the reading of bills and the intervals between readings, as well as regulations against changing the purpose of a bill during its passage, and requiring that only one subject be included in a bill and that that subject be expressed in the title.

353. Special Powers of the Houses. In most of the states each house possesses special powers. The power of impeachment belongs to the lower house, but the senate acts as a court for the trial of impeachment cases. A two-thirds vote is usually required for conviction. The senate also possesses the power of confirming appointments made by the governor. On the other hand the power of originating money bills resides, in a majority of the states, with the lower house. In Vermont the power of proposing amendments to the constitution is given to the senate alone, in Connecticut to the house.

354. The Executive: Its Character. The organization of the executive power of the states differs very materially from that of the federal government. We have seen that the president is the real executive head of the nation. In him the chief executive authority is vested and to him are re-

sponsible the officials who administer the federal law. He appoints them and he may at any time remove them for cause. In other words, the executive authority of the nation is centralized. In the states, on the other hand, it is very much decentralized. The relations existing between the governor and the other principal administrative officers of the state are very different from those existing between the president and his cabinet. These state officials usually are not the governor's appointees. They are generally elected either directly by the people or by the legislatures and are in nowise responsible to the governor. Even where, as happens in a few of the states, some of these officials are appointed by the governor with the confirmation of the senate, they are still not dependent upon him. Their duties are prescribed either by the constitutions of their states or by statute, and they are removable only for just legal cause. They are not the governor's subordinates or agents; they are his colleagues. Moreover, it cannot even be said that the governor and the other central administrative officials together make up the whole of the state executive. The power is still further shared by a large number of local officials — county, town and municipal officers — who, though they execute state law, are so little responsible to the central executive authority that they are not usually regarded as state officers at all, but only as officers of their districts. Neither the governor, nor any one of his colleagues with the possible exception of the superintendent of education, exercises any real control over the local authorities by whom the laws are actually administered.

355. The Governor. In spite of this diffusion of executive power, however, the position of the state governor is

by no means insignificant. If he is, as he has been called, only a "piece" of the executive, still he is a very important piece. Though he has no real control of the other executive officers and administrative boards, still he has general oversight of them. He has some power of appointment, though not very extensive. As commander-in-chief of the state militia, it is his duty to see that order is preserved within the state and to repel invasion in case such occurs. The governor also has the power under certain restrictions to grant reprieves and pardons to persons convicted of crime. His most important duties, however, are those which have to do with the legislature, and which give him some control over legislation. At the beginning of each session he sends a message to the legislature for the purpose of informing the law-makers of the condition of the commonwealth and of recommending such measures as he deems necessary. In case the houses fail to agree on the time of adjournment he may adjourn them. In most states, also, he may call special sessions, either with or without the request of a portion of the legislature. Most important of all, however, is his power of vetoing measures that he does not approve, a power given him in every state except three (Rhode Island, Ohio, and North Carolina). Bills may, of course, be passed over the governor's veto by majorities varying widely in the several states. In many of the states the governor may veto particular items in appropriation bills; other bills must be approved or disapproved entire.

356. The Governor's Colleagues. In addition to the governor all the states have a number of other central executive officers, though not all the states have exactly the same ones. Many of them have lieutenant governors who succeed to

the governorship in case the governor is for any reason incapacitated. All of them have secretaries of state and all have treasurers. Nearly all have attorneys-general. Most of them have superintendents of education, though some have boards of education instead. Some have auditors; in others the same duties are performed by comptrollers. In four of the states (Maine, New Hampshire, Vermont, and Massachusetts) there exist governor's councils. The secretaries of state keep and affix the seal of the commonwealth and keep all state records. The treasurers have charge of the public funds, which they pay out only on warrants issued by the auditors or comptrollers. The auditors or comptrollers have general supervision of state finances. Like the national secretary of the treasury they present to the legislatures estimates of the amount of money needed for state purposes, though the state legislatures in general feel themselves even less bound than does congress by such recommendations. The attorneys-general are the legal advisers of the states and conduct all state cases before the courts. The superintendent of education oversees the educational system of the state, often apportioning the school moneys and deciding disputes involving school authorities. In addition to these central executive officers there are in many of the states various departments in charge of superintendents or boards, *e.g.*, departments of health, of labor, of agriculture, of charities and correction. In most cases these departments have not yet been given sufficient power to render their control effective, and a large part of the duties which naturally belong to them are still under local control.

357. Election, Terms, and Qualifications of Executive Officers. Not only the governor but the other central executive

officers as well are chosen by direct popular vote over the whole state. The terms vary in the different states. In general the terms of the other principal officers are the same as that of the governor and lieutenant governor. In most of the states the term is either two or four years; occasionally, however, one or three. Most of the states prescribe certain minimum qualifications, covering age, residence, and citizenship, which always apply to the governor and lieutenant governor, and generally to the other most important officers. All these officials are removable by impeachment.

358. The Judiciary. Justice in the states is administered through a system of courts which exist quite independently of federal law. The two systems of courts, federal and state, are entirely separate, so that for cases falling within their jurisdiction the decision of the state courts is final. Only in cases involving federal law or in cases in which the nature of the parties to the suit is such that no state court has complete jurisdiction (*e.g.*, suits between citizens of different states) does an appeal lie to the federal courts.

359. The System of Courts. The judicial systems of the different states vary so considerably that only the most general description is applicable to all of them. Usually there are four grades of state courts. The lowest are those presided over by justices of the peace and having jurisdiction over petty civil and criminal cases. Their decisions are almost always subject to appeal to higher courts. Next above them stand the county or municipal courts, which hear appeals from them and have original jurisdiction in civil cases where the amount involved is large, and in criminal cases of the graver character. Next come the superior courts, called also circuit or district courts, which hear appeals from the

lower courts and have original jurisdiction of the most general character in both civil and criminal cases. The highest court in the state is usually the supreme court. In most of the states its jurisdiction is only appellate, though in a few of the older states it has original jurisdiction as well. In five of the states (New York, New Jersey, Louisiana, Kentucky, and Illinois) there are courts higher than the supreme court called courts of appeal.

360. Special Courts. In addition to these, some of the states provide special courts for the trial of cases in equity (cases arising out of grievances for which the common law furnishes no remedy). Usually, however, instead of providing special courts, the states have given jurisdiction over such cases to one or more of the regular courts. Much more general is the special probate court, whose business it is to see to the disposition of the property of deceased persons. In many states, however, this function is also performed by the ordinary courts.

361. Judges. The judges of most of the state courts, both higher and lower, are elected, those of the supreme court usually by the people of the state at large; those of circuit, county, municipal, and other courts, by the electors of the area in which they serve. In some states, however, the higher judges are chosen by the legislature; in a few others they are appointed by the governor with the advice and consent of the senate, and in three of the New England states they are appointed by the governor and council.

362. The Term of Office varies from two years to tenure during good behavior. In general the higher judges hold office for longer terms than do the lower ones. Justices of the peace are usually elected for two or four years, circuit

judges for four or six years, supreme judges for eight or ten. Most of the states impose an age and residence qualification upon candidates for judgeships, and some require tests of legal fitness also.

363. State Finances. The state government like the national government cannot exist without money. The power to tax the people of the state is therefore vested in every state legislature. "Although the budget of the state is not large in proportion to the wealth of its inhabitants," a considerable revenue is required, not only to pay the officers and the militia, but to sustain the various enterprises in which the state is interested, such as asylums and institutions for the unfortunate, schools, canals, and the like. If the state is in debt, some of this revenue goes toward paying the interest on its bonds.

364. Taxes. State taxes usually take the form of direct taxes on real estate and personal property, or in some cases on collateral inheritances. A few states impose a poll tax, which is often a prerequisite for voting. Almost every state in addition imposes certain indirect taxes. Such are the taxes on particular trades or occupations, which sometimes take the form of license taxes; or the taxes on franchises, *i.e.*, the right to operate railroads, etc.; or again taxes on railroad stock.

365. Exemptions. Certain properties are exempt from taxation. Among these are public buildings, since they are used for public purposes, and it is for such purposes that taxation is levied; institutions or societies for the improvement of the people, such as schools, churches, charitable institutions and agricultural societies; the necessary implements of the farmer or mechanic; and United States securities. In some states, possibly with the idea of encouraging

thrift and industry, the law exempts deposits in savings-banks from taxation.

366. Assessment. The first step toward raising revenue by direct taxation is assessment. Certain local officers, known as appraisers or assessors, chosen by the local governments but acting under state laws, ascertain the value of the real estate and personal property of the various localities. As the contribution of the communities is based on this valuation, it is to their interest to put it as low as possible, and thus to avoid their share of the state burdens. To correct abuses of this sort, many states have a state board of equalization for the purpose of having the taxable property of the localities equally and fairly valued. Their work is sometimes supplemented by similar county boards. Many states have also taken the assessment of certain sorts of widely diffused property, *e.g.*, railways, telegraph and telephone lines, out of the hands of the local assessors and have established boards of state assessors to deal with them.

367. Apportionment and Collection. When the state has determined the amount to be raised, it is apportioned throughout the state according to the amount of taxable property as determined by the returns received from the assessors. The amount to be raised is divided by the amount of taxable property, and the per cent obtained constitutes the state tax rate. With the valuation of the county property before them it is easy for the county officials to ascertain in a similar manner the county rate, and the town officers the town rate. State, county, and town taxes are usually paid in one sum. When the collector receives the taxes the town officers retain the part raised for town purposes and send the remainder to the proper county officers, who similarly retain

the county taxes and remit the rest to the state authorities. Indirect taxes are usually paid directly to state officials.

368. Restrictions upon Taxing Power. Various restrictions have been imposed upon the states by their constitutions in this matter of raising and spending money. "Taught by sad experience of reckless legislatures," the people limit the amount that may be raised annually by taxation. Sometimes this limitation takes the form of a requirement that the sum raised shall be no more than sufficient to meet current needs. In their fear of state indebtedness they have limited the amount that may be borrowed, sometimes to an absolute sum, sometimes to a certain percentage of the assessed valuation of the taxable property. They have besides forbidden the state to contract debts without immediately providing a sinking-fund to discharge the obligation. Similar restrictions also exist to prevent indiscriminate borrowing on the part of the local governments under state jurisdiction.

369. Education. One of the most important functions entrusted to the state governments, is the maintenance and control of the public school system. In this work of educating the masses, a work so important under a republican form of government, the national government by extensive land grants has aided the states most liberally; but it has left the control of the public schools, both elementary and higher, to the states.

370. The School System. The earliest public schools were organized not by the states but by the localities that desired them, and they formed no part of any system. Gradually, however, as the need for better organization, better instruction, and greater uniformity became apparent, the states be-

gan to regulate public education by law. At first there were no state school officials, and the attempt at state control was to a great extent ineffective. Now, however, the schools are everywhere completely regulated by state law, though the law is still administered for the most part by local officers. In each state the law determines, among other things, what shall be the administrative unit for the school system — county, town, or district; prescribes a minimum list of subjects to be taught; fixes a minimum school year; and lays down the requirements which must be met by the teachers of the state.

371. Various Grades of Schools are maintained by all the states. The common schools, sometimes called district schools, and graded schools, furnish facilities to everyone desiring an elementary education. High schools and academies give instruction in the academic branches and prepare for college; while a higher education is to be obtained in colleges and universities, many of which are supported wholly or in part by state funds. Most of the states of the west maintain at least one state university, where tuition is free to its citizens. They have also established technical and agricultural schools and colleges for the purpose of increasing the industrial efficiency of their citizens. The states also endeavor to secure the best instruction possible by creating normal schools for the training of teachers and by fixing tests for candidates for positions as teachers.

372. State Administration of Schools. In nearly every state in the union the educational system is under the general supervision of a state board of education or a state superintendent, or both. These officials are chosen in various ways in the different states, though the boards are perhaps

more frequently appointed by the governor or legislature, the superintendents more often elected by the people. It is the business of these officials to interpret and enforce the school laws; to care for the state school funds; to attend to the examination of teachers, except where that duty has been intrusted to county boards; and in some cases to select the text-books. It is their duty also to study educational methods and to keep themselves generally informed in educational matters with a view to improving as rapidly as possible the schools of their state.

373. Local Administration of Schools. Below these state officials there are usually county boards of education and county commissioners or superintendents. The examination of teachers is usually conducted by these boards under state law. The county commissioners or superintendents are charged with the duty of visiting and inspecting the schools and distributing the school funds among them. In the rural sections school law is administered by officers usually called trustees chosen for a term of three years by the people of either the school district or the township. Cities have, under state laws of course, their own separate school systems, administered by their own boards of education and city superintendents.

374. Compulsory Education. Many states regard an elementary education as a matter so important and so closely connected with the stability of republican institutions that they have enacted laws compelling the attendance of all children between certain ages for a certain length of time each year.

375. Importance of State Government. As indicated above the federal government left to the states all those powers not

delegated by them to the nation nor forbidden by the constitution to the states. How vital, then, are the issues at stake in our state elections! President Garfield said: "The state government touches the citizen and his interests twenty times where the national government touches him once. For the peace of our streets and the health of our cities; for the administration of justice in nearly all that relates to the security of person and property, and the punishment of crime; for the education of our children, and the care of unfortunate and dependent citizens; for the collection and assessment of much the larger portion of our direct taxes, and for the proper expenditure of the same — for all this, and much more, we depend upon the honesty and wisdom of our General Assembly (of Ohio) and not upon the Congress at Washington." When it is remembered further that all the important reforms that have agitated the people of England during the last century, with the possible exception of the corn laws and the abolition of slavery, would have been proper objects for our state rather than our national government, the relative importance of good management in state affairs becomes apparent.

Library References. — Ashley, §§ 412–437, Chaps. XIX, XXII; Macy, Chaps. VIII–XI, XIII; Macy, *First Lessons*, Chaps. III–XV, XXIV, XXVIII; Dawes, Chaps. XIII–XIV; Fiske, pp. 173–188; Hinsdale, Chaps. XLIX–LIV; Bryce, Vol. I, Chaps. XXXVI–XLV; Wilson, §§ 885–994; Dole, Chaps. XV–XVII, XIX; Lalor, Article on *Constitutional and Legal Diversities in States;* Woodburn, Chap. VII.

QUESTIONS ON THE TEXT

281. In some states, women, aliens, infamous criminals, idiots, minors, and lunatics are excluded from voting. Give reasons for or against the exclusion in each case.

282. Should paupers be allowed to vote? Give reasons.

283. Give a reason for the law requiring registration of voters. Why is such a law more important in a city than in a small village?

284. Give one reason why a legislature should consist of two bodies.

285. Give arguments for or against biennial sessions of the state legislature.

286. What is the capital of a state, and why so called?

287. Describe the process of assessing property for the purpose of taxation, and show how the amount of money to be raised by each town is fixed.

288. Mention three kinds of property that are usually exempt from taxation, giving reasons. Why has the state the right to impose taxes?

289. What is meant in general by a compulsory education law? Why is such a law desirable?

290. May a state levy and collect an income tax?

291. What government touches the individual the more frequently — city, state, or national? Why?

292. Mention the different *state* courts. What is a police court?

293. Under what circumstances may cases be transferred from state to federal courts?

294. If legislation on any subject is desired by citizens of the state, how is the attention of the legislature secured?

CHAPTER XIX

LOCAL GOVERNMENT

376. Types of Local Government. We have already traced in outline the origin of the various forms of local government in the United States (§§ 51–65). It remains for us now to study in somewhat greater detail existing arrangements. Aside from municipal government there are, as we saw in Chapter III, three types of local government: the town (township) type, the county type, and the mixed or compromise type, each predominant in its own section of the country. In the six New England states local government is town government. In the south the county is the characteristic unit. Elsewhere the mixed system prevails, though with considerable variety of form, the preponderating influence falling now to the town, now to the county.

377. The Town System. It should be remembered that the term "town" as used in New England is the name of a rural, not an urban district. Elsewhere these districts are usually called townships. The characteristic feature of town government is the town meeting or general assembly of the voters of the town, which is held annually, generally in the spring, or oftener if summoned. Notice of the time and place of meeting and of the business to be considered must be given at least ten days before the meeting occurs. This body passes all laws necessary for the government of the town, elects new officers, receives the reports and audits the

accounts of outgoing officers, votes the amount of money required for current expenses and appropriates it to the various local purposes, and in general manages local matters of every kind.

378. The General Executive Officers of the Town, called selectmen, vary in number from three to nine and are elected annually. In addition to these there are also usually a town clerk, a treasurer, assessors, a collector, a school committee, surveyors of highways, constables, and justices of the peace. Their names serve to indicate their duties. Where local needs demand, there are also such officials as cemetery and library trustees.

379. The County in New England. To the towns belong all the really vital functions of local government. The county exists in New England, but its functions are comparatively unimportant. It is first of all a judicial district and elects the necessary judicial officers. The chief administrative officers are the county commissioners and the county treasurer. Their principal duties are the care and maintenance of the county buildings — court houses, prisons, etc.; the issuing of certain licenses; the laying out of inter-town roads; and the apportionment of the county tax among the towns.

380. The County System. In the south the unit of local government is the county. It performs not only the judicial functions and such other administrative functions as fall to the share of the county in New England, but most of those that there belong to the towns as well. Its principal officers are the board of county commissioners, the county treasurer, the auditor, and the superintendents of roads, of education, and of the poor. The county has also its full complement

of judicial officers, including sheriff, clerk, surrogate, coroner and state's attorney. There are sometimes also assessors and collectors of taxes. County officers are nearly all elected by the people, usually for one or two years.

381. Smaller Divisions. Though the county is the unit of local government where the county system prevails, still there exist subdivisions smaller than the county. These vary from state to state both in name and in character. In a few states they are called townships and do not differ appreciably from the townships of many of the middle and western states; but nowhere is there anything corresponding to the New England town with its primary assembly — the town meeting. The officers of these minor local divisions exercise their powers for the most part under the control of the county authorities. Most important among them are the local school officers. Several writers have pointed out that where the township system is growing up in the south, it is growing up out of school organization, so that the school "is becoming the nucleus of local self-government in the South now, as the church was in New England two centuries ago."

382. The Mixed System. The township-county system, in use throughout the middle and northwestern states, presents very considerable variations. Under this plan of local government, county and town are much more thoroughly integrated than in New England or the south; but the system still presents two main types, one of which emphasizes the importance of the town, the other that of the county, according to the extent to which the township system has been adopted. Where the township has a vigorous life of its own, there the town meeting is found, exercising very real if some-

what less extensive power than that of New England. Where it is less developed there is no town meeting; there is only popular election of officers, who thereupon constitute the executive machinery of the town. In general the number and character of township officers vary with the degree of development attained by the township system, the less developed townships electing fewer officers. The selectmen of the New England town have everywhere disappeared, at least in name. The officers most nearly corresponding to them in function are called in some states supervisors, in others trustees. Sometimes one, sometimes more, are elected in each township; and they not infrequently perform duties that in the New England town are performed by several different officers.

383. The County in the Mixed System. Naturally, wherever the importance of the township has been emphasized that of the county has tended to decline; but the county is everywhere under the mixed system of more significance than in New England. Its organization and its functions vary somewhat widely. Its central administrative authority is sometimes a board composed of the supervisors of the townships. Sometimes it is a board of three or more commissioners elected directly by the people of the county. Besides the functions performed by the New England counties, these counties of the township-county system are often charged with the duty of poor relief, with the general oversight of township expenditure, and with the business of tax equalization.

Library References. — Ashley, Chap. XX; Macy, pp. 12–19; Fiske, pp. 54–57, 73–74, 81–94; Hinsdale, pp. 397–405; Bryce, Vol. I, Chaps. XLVIII–XLIX; Wilson, §§ 995–1028; Dole, Chap. X.

QUESTIONS ON THE TEXT

295. How are counties formed? Towns? School districts?

296. Discuss the present importance of the town as a unit of government.

297. Mention the legislative body of a county. Give the chief executive officer and his duties.

298. How are the poor provided for by different localities?

299. Is there any good reason why county officials should be partisans? What proportion of their duties relate to political policies? Is administrative ability essential?

300. Give illustrations of the exercise of federal government, state government, and local government in your own town or city. Of which government do you observe the most signs? Of which the fewest signs? Of which government do the officers seem most sensitive to local opinion?

CHAPTER XX

MUNICIPAL GOVERNMENT

384. Rapid Growth of Cities. "There is no denying that the government of cities is the one conspicuous failure of the United States," writes an eminent observer of American political conditions. Whether we accept this conclusion, or that of a prominent educator and man of affairs that the "average American city is not going from bad to worse . . . the general tendency is toward improvement," the concentration of more than thirty per cent of our population in cities makes the problem of municipal government one of the most important in America. The American of the present is confronted with problems of government of which his forefathers of a hundred and twenty-five years ago never dreamed.

385. Difficulties of Municipal Government. In part these difficulties have come about through the mere rapidity with which our cities have grown up. In a few decades, sometimes in a few years, very considerable populations have found themselves gathered about some railroad junction or the plant of some great industrial enterprise and confronted with the necessity of supplying themselves as soon as possible with light, pavements, sewers, schools, public buildings of all kinds, in order to provide for their own convenience, health, and safety. Under such circumstances the demand is always for the immediate supply of the people's needs, not for the best and most economical means of permanent sup-

ply. The result is that considerable sums of money are expended on mere makeshift public improvements, which must soon be replaced by something better planned and more permanent. Then, too, when public works are undertaken thus hastily, the temptation to extravagance, if not to actual dishonesty, is considerably increased. This necessity for the expenditure of great sums of money within a very short period for public works makes it necessary for the cities to borrow largely, so that nearly all our cities are bearing great burdens of municipal debt, whose management increases in no small measure the difficulties of municipal government. Finally, increase in the size of cities results in an astonishing increase in the complexity of municipal government, in the number and variety of matters to be attended to by the municipal authorities; and the more complex it becomes, and the more highly specialized and technical becomes the service of the different departments, the less is it possible for the ordinary citizen, or even the extraordinarily well-informed citizen, to criticise it all intelligently. If, therefore, municipal government in the United States has been "a conspicuous failure," it is a condition of affairs not greatly to be wondered at nor altogether to be despaired of.

386. The City: Its Character. In the United States the term "city" is applied to a community, which, on account of its dense population, has secured a charter from the state legislature, granting it a special form of government. For purposes of study, however, there should be included along with cities proper the large number of incorporated villages and boroughs, and the towns of the south and west, which are cities in miniature and are created either by a particular act of incorporation or by conforming to certain general state

laws. The same problems, only on a smaller scale, arise in these divisions; the same offices appear, though not so numerous. The description, then, of city government applies in general to the government of these smaller communities. The difference is one of degree.

387. Functions of City Government. City government may be said to have two sets of functions to perform corresponding to the twofold nature of the city, first as a subdivision of the state, and second as a centre of population more or less dense. As a subdivision of the state the city is charged with the execution of certain state laws, some of them entirely general in character, such as those providing for the preservation of the peace, granting licenses, preventing adulteration of food and the like; some of them general, but having to do especially with local government, such as those requiring the maintenance of schools and the care of the poor. In addition to this administration of state law, the city must provide for its own local needs in such matters as the paving, grading, and cleaning of streets, the furnishing of water, of light, of fire protection, and of protection against disease.

388. Organization of City Government. The city charter, or the act of incorporation, outlines more or less in detail the frame of government. Everywhere the same separation between executive, legislative, and judicial departments which was seen in the state and national governments is characteristic of the city government. The chief executive official is the mayor, who is assisted by other executive officers or boards, some of them elected directly by the people, others appointed by the mayor or the city legislature. The legislative body consists sometimes of one chamber, sometimes

of two, the whole body being in either case elected directly by the people. Where there are two houses, the upper house is usually called the board of aldermen, the lower the common council. These differ "very much as the two houses of a state legislature differ, in the number and size of the districts which their members represent." Where there is but one chamber it is called in some cases the board of aldermen, in others the common council. The judicial department consists of a number of judges, usually elected by the voters, but sometimes appointed by the state.

389. Recent Changes. When we come to examine the organization and powers of these departments in more detail, we shall find that the executive and the legislative departments differ considerably in different cities according as the city charter has or has not been recently revised. There has been, we shall find, a tendency toward centralization of power in the hands of a single executive authority — the mayor — with a corresponding curtailment of the powers of the legislature. In other words, city government, at least in its executive department, is coming to resemble the national rather than the state government.

390. The Executive Department: Usual Form. In cities whose governments have not been recently reorganized — and that means in most of our cities — the executive department is organized on a plan very similar to that prevailing in the state governments. There is a chief executive, the mayor, chosen by popular vote, usually for two or four years. Then there is a number of other executive officials, or boards, or both, some of them chosen by the people, some possibly appointed by the council or even by some state authority, over whom the mayor is in general unable to exercise any

control. He usually has a somewhat limited power of appointment and removal. Like the state governor, he owes his chief influence to his power of vetoing the acts of the legislature; though his veto, like the governor's, may of course be overridden by a sufficient majority.

391. In the Centralized City Government the position of the mayor is very different. He is the real executive head of the city and is held strictly responsible for the administration of all its affairs. In the extreme centralized type, the people elect almost no executive officials except the mayor. Under the Brooklyn charter of 1882, which was the first charter of this kind, the people elected besides the mayor, only the comptroller and the auditor. All the other chief administrative officers were appointed by the mayor without confirmation by the common council. In most of the city governments that have been recently reorganized the example of Brooklyn has been followed to a greater or less extent, and the principle of concentrated responsibility has been more or less fully adopted. Not only have the mayors been given large powers of appointment and removal, but they have in some cases been made members, together with the chief financial officers of the corporation, of a board of estimate, which calculates the amount to be raised for various purposes by taxation and then transmits its estimates to the city council, which may approve them or cut them down but cannot increase a single item.

392. Administrative Departments. Along with the movement toward centralization of power has gone an attempt at better classification and organization of the great administrative departments, which are so important in city government. Under the decentralized form of city government

there is usually a great number of these departments, the officials of which are chosen in a variety of ways, and which perform their functions for the most part independently of each other. In general it has been found that this practice not only makes it impossible to secure unity of administration; it also increases the temptation to "log-rolling," at least, if not to something worse. Moreover, in cities of this type, the general tendency has been to trust executive work to boards or commissions rather than to individuals, with a resulting division of responsibility and lack of efficiency. Consequently, in the cities that have recently remodelled their governments, the number of departments has been reduced by abolishing some and by consolidating others, whose functions were allied, into one great department with a number of subordinate bureaus. Thus we find a department of public works with such bureaus as those of streets, street cleaning, engineering, and water supply. The heads of these great departments are called commissioners and are appointed by the mayor, who holds them to strict accountability for the administration of their departments. They in turn appoint the heads of bureaus whom they hold responsible to themselves, and thus the principle of definite responsibility permeates the whole system. Under the centralized system the management of the departments is entrusted usually to a single head; but in a few cases where it is felt that deliberation is required, the work is entrusted to a board or commission, which then appoints a chief or superintendent to execute the plans it adopts.

393. The City Legislature. Where the legislature consists of two houses, the members of the lower house are usually elected by wards, those of the upper by divisions larger than

wards or sometimes by general ticket. Where there is but one chamber, each ward usually sends a representative, though in a few cities election is by general ticket or by specially created election districts. The term is usually either two or four years.

394. Its Powers. Since the city government is created by act of the state, its legislature of course possesses only such powers as are delegated by the state, and in exercising them it is subject always to interference on the part of the state. These powers are enumerated and defined in the charter or in the general or special act of incorporation by which the city becomes a city. They consist usually of the power to pass all such ordinances and by-laws as may be necessary for the comfort, convenience, or safety of the citizens; of the power to lay taxes for the support of the city government; of the power to borrow money for permanent improvements, subject always to the limit of municipal indebtedness fixed by the state and also subject often to the special consent of the voters; and of the power to grant franchises. It should be noted that not the whole legislative power of the city is given to the legislature. Besides the legislative power exercised negatively by the mayor through his veto, certain executive boards, such as the police and health boards, may make proclamation of necessary regulations, which possess thereupon the same force as ordinances passed by the councils.

395. Recent Restrictions. In recent charters the powers of the legislative branch of city government have been greatly curtailed. We have already seen that the creation of boards of estimate has reduced its power in the matter of taxation until it has scarcely more than the power of revision. Mr.

Low has pointed out that in New York "that tendency" (viz., to restrict the powers of the city legislatures) "has been acted upon to so great an extent as to deprive the common council of every important function that it ever possessed, except the single power to grant public franchises." The same writer declares this problem of properly organizing the legislative powers of the municipality to be "the great unsolved organic problem in connection with municipal government in the United States."

396. The Judicial Department. The city courts are merely a part of the judicial system of the state. Besides the police justices, usually elected by the people for short terms, there are in the larger places, several superior judges chosen for longer terms. The city courts have jurisdiction of all cases arising under city ordinances as well as of minor criminal and civil suits in which state law is involved. Appeal to a higher court is possible in most cases.

397. The Village. The characteristic features of the incorporated village or borough governments can be noted briefly. A board of trustees presided over by a mayor, president, or chief burgess, is given extensive power of making by-laws and considerable power of taxation for local improvements as well as for local administration. The other officers are the treasurer, clerk, collector, street commissioner, and sometimes overseers of the poor. In general the village or borough possesses a somewhat smaller measure of independence than does the city.

398. Some Problems of City Government. As we saw at the beginning of the chapter, the conditions under which our cities have grown up have been such that the problems presented to the citizens for solution have been, and still

are, numerous and difficult. It is worth while to examine some of these a little more closely.

399. Finances: *Income.* One of the most thorough tests of the efficiency of a city government is its administration of its finances. It was the wide-spread mismanagement of financial affairs, with extravagant expenditures and the accumulation of enormous municipal debts, that first directed public attention to the shortcomings of municipal government and subjected it to the searching criticism of recent years. A city derives its income from a variety of sources. Its chief reliance is upon the general property tax levied upon all real estate and, so far as it is discoverable, upon all personal property. Besides this general tax very considerable sums are derived from special assessments upon property whose value is enhanced by public improvements made in the neighborhood. Where the city furnishes water, gas, electricity, or any similar service, a part of its income is derived from the charges made for such service; where such businesses are in the hands of private corporations, the city still, as a usual thing, derives an income from them through the sums paid for the franchises. In addition to these sources of income there are the licenses issued for the carrying on of various kinds of business, and fines paid as a penalty for violation of law.

400. *Expenditures.* The money thus obtained is expended in a great variety of ways. The officers who administer the city's affairs must usually be paid for their services, so that a part of it is expended for salaries. Large sums are spent for police and fire protection, for lighting the city, and for the care of its streets. The largest single item of expense is usually that for education; on the average about a sixth of

the total expenditure is devoted to the public schools. Where there is municipal ownership of water-works, lighting plants, etc., the expenses of operating these industries are a part of the city's expenditure. Finally, no insignificant item is the interest on the municipal debt.

401. *Municipal Debts.* While the existence of municipal indebtedness is not necessarily an evil nor an unfailing sign of extravagance or corruption on the part of city authorities, still it must be admitted that the rapid increase of city debts has at times seriously menaced the prosperity of many of our cities. Unquestionably there has been no small amount of extravagance and corruption. Most municipal indebtedness has, however, been incurred in the attempt on the part of our rapidly growing cities to build up what one writer has called their "permanent plant" — water-works, pavements, sewers, schools, municipal buildings, public improvements of all kinds. Such undertakings have often been unwisely begun and wastefully managed, and the resulting evils of overtaxation and excessive indebtedness have brought about attempts on the part of the states to "curb the recklessness of city councils." Almost all the states have now limited the amount of indebtedness that a city may incur to a certain percentage (usually two to ten per cent) of the assessed value of the taxable property.

402. Extension of Municipal Functions. Another problem with which the cities find themselves more and more frequently confronted is the question of the extension of municipal functions. There is general agreement that it is the proper function of the city to pave and clean its streets, to furnish sewers, to provide schools and public parks; but the question often arises as to how much further the city's

activity should extend. Should it undertake to furnish water, for example, or light, or street-car service? If it is the function of the city to protect the health of its citizens by proper sanitary arrangements, why should there not be also public baths and laundries? If it rightly provides public schools and libraries, why not municipal art galleries and free concerts? If public parks, why not playgrounds and gymnasiums?

403. Present Practice. The business of supplying water and, to a still greater extent, that of supplying gas, electricity, and street-car service, has until recently been left to private enterprise. In the case of the water-supply there has of late been a general tendency toward municipal ownership. More than half the water-works plants of the United States are now owned by cities, and of the large cities very few are dependent upon private companies. Of gas and electric light plants a much smaller proportion are municipal; while street railways are still almost entirely in the hands of private enterprise. Since the purity of the water supply is of such great importance to the health of the community, it is not surprising that the necessity for municipal ownership should have made itself most distinctly felt in that connection.

404. Franchises. Where the furnishing of water, light, and transportation is still in the hands of private persons or corporations, the question of the granting of franchises becomes an important one. These industries require for their operation the use of the city streets; and since the streets are public property, the privilege of using them for such purposes must be obtained from the city council, or, in some cases, from the state legislature, by means of a grant called a franchise. There can be no question that the city coun-

cils have greatly abused this power of granting franchises, and the charge of corruption so often made against councilmen has been in many cases only too true. A franchise of this nature is ordinarily very valuable and, as the city grows, becomes increasingly so; yet many of them have been given away, either through the ignorance or the indifference of councilmen, or more often through corruption, the votes of councilmen having been paid for in money or in stock of the company receiving the franchise. Cities are now attempting to control these evils by regulating the conditions under which franchises may be granted. Where such reforms have been attempted it is usually required that the term of franchises be limited to fifteen or twenty years, that they be sold to the highest responsible bidder, and that a certain minimum per cent of the gross receipts from the business concerned be paid into the city treasury.

405. Municipal Ownership. The question of the desirability of municipal ownership of these industries has been much discussed. In the case of the water supply municipal ownership has generally proved more satisfactory than private or corporate ownership. That it would do so in the case of the others is not proved. Opponents of municipal ownership urge against it the argument that it would in all likelihood be used by the political party in power for the furthering of its own ends. Places would be filled with political adherents regardless of their fitness, and the business would be badly and wastefully managed. Advocates of municipal ownership reply that extravagance and corruption under that system could not possibly be greater than that which now prevails in the granting of franchises, and that such extensions of municipal activity are the best

means of awakening the interest and public spirit of the citizens.

406. Causes of Municipal Mismanagement: *Defective Organization.* Various causes have been assigned for the generally admitted imperfections of city government. As we saw in the earlier part of this chapter, they have been partly due to what have been called "mechanical defects in the structure of municipal governments." Our city governments have apparently been constructed on a wrong theory — the theory that cities are states in miniature. The principle of division of power, which works very well in the state and national governments and in the rural districts, does not seem to be applicable to the cities. There is need of some method of fixing and enforcing responsibility. We have seen that some of our cities have met the difficulty with a considerable degree of success by concentrating power in the hands of the mayor; but this does not completely solve the problem of the organization of municipal government. The question of what shall be done with the city council remains. Up to the present, attempts to "reform" it have consisted principally of measures depriving it of its powers or placing limitations upon its exercise of them. Will this process be continued until the city council disappears altogether, or will some method be found of fixing responsibility upon the members of the legislature as well as upon the executive?

407. *Influence of State and National Politics.* Another frequently mentioned cause of bad city government is the carrying over of state and national political issues into city affairs. Rarely, if ever, have the questions confronting the voter in municipal elections anything whatever to do with

party differences; yet they are at present, with occasional marked exceptions, regularly decided in accordance with party affiliations. This state of affairs is in part due to the wide-spread influence of the "spoils system," which looks upon public office as the legitimate reward of party service and which keeps the party machinery "oiled and greased and always working at high pressure;" in part to the fact that the regular party organizations are almost the only permanent political organizations in the cities. Occasionally, particularly after exposure of the operations of some corrupt ring or dishonest official, our cities have been seized with what the newspapers term a "spasm of reform." Independent movements are organized, independent candidates are nominated and perhaps elected, but such movements have generally been only temporary. They are usually too poorly organized to stand long before the assaults of the regular party organizations. The adoption of civil service reform methods, which has been brought about within recent years in some of our cities, furnishes a means of combating the "spoils system;" and efforts have also been made with some degree of success to remove the city from the influence of state and national politics by holding municipal elections at such times that they will not coincide with state and national elections.

408. *Lack of Civic Spirit.* The fundamental cause of municipal mismanagement, however, as of all political mismanagement, is to be found in what has been called "the lack of civic spirit" on the part of the citizens. The explanation of this defect is often looked for in the existence in our cities of large foreign populations, to whom our political ideals and methods are strange, and who can fit themselves but

slowly into our political system. Doubtless our foreign born population increases the difficulties of the problem somewhat; but our shortcomings in this respect cannot be justly charged to them nor even to the ignorant and vicious classes. They are primarily due to the indifference of our so called "good" citizens or to their absorption in other affairs. Mr. Bryce says in this connection: "We find able citizens absorbed in their private business, cultivated citizens unusually sensitive to the vulgarities of practical politics, and both sets therefore unwilling to sacrifice their time and tastes and comfort in the struggle with sordid wirepullers and noisy demagogues." So long as this condition is general we need hope for no very marked improvement in municipal government.

409. Reform Influences. Our cities are, however, making progress toward better things. Systematic efforts to arouse public interest in municipal affairs are now made in nearly all our great cities through permanent organizations, such as good government clubs and municipal reform leagues. Through the patient and persistent efforts of such organizations the number of those who are awake to their civic duties daily increases. "In the increase of that number, . . . rather than in any changes of mechanism, lies the ultimate hope for the reform of city governments."

Library References. — Ashley, Chap. XXI; Macy, Chap. XII; Fiske, Chap. V; Bryce, Vol. I, Chaps. L–LII; Wilson, §§ 1029–1036; Dole, Chap. XIII; Wilcox, Chaps. III–IV; Zueblin, *American Political Progress;* Baker, *Municipal Engineering and Sanitation.*

QUESTIONS ON THE TEXT

301. Explain why the problems of local government are more difficult in a large city than in a village.

302. Define city charter. Mention three topics treated of in a city charter.

303. What is the name of the legislative body of a city? What are its enactments called? Mention four important matters on which it may legislate.

304. Why is concentration of power in the hands of the mayor believed to give better government?

305. What are the advantages of choosing councilmen by election at large or on a general ticket? Is it advisable to choose part of the council on a general ticket and part by wards? Why?

306. What is an incorporated village? A city? State the object of these corporations and show wherein the city differs from the village.

307. State two advantages that may result to a village from incorporation. Mention a possible disadvantage.

308. Mention the legislative body of a village. Give the chief executive officer and his duties.

309. To whom do the streets belong? Has anyone a right to grant perpetual franchises upon them?

310. What is a franchise tax? Give two reasons for or against the enactment of a franchise tax law.

311. Discuss the desirability of municipal ownership of waterworks; of lighting plants; of street railways.

312. Is it wise in the interests of good local government to unite the choice of city, county, state, and national officers in one election? Why?

313. Show why the influence of political parties upon the management of city affairs has not been good. Is independence of parties possible? Why are cities rather than counties and states subject to "ring" rule?

314. Give arguments for or against state control of the police departments of large cities.

315. How may municipal government be improved? Illustrate your answer by an example. How are you going to help improve it?

CHAPTER XXI

AMERICAN POLITICS AND POLITICAL PARTIES

410. Importance of Parties. In the study of our political system as described in the foregoing pages we have several times touched upon a phenomenon which must now be examined more closely if we wish to understand how our government actually does its work. This is the phenomenon of political parties. With us government is unquestionably party government. It would be difficult indeed to overestimate the importance of the rôle played by party in this country. Everywhere and always the wishes of the people, so far as they find expression in the government at all, do so through some organized political party. As a recent writer has said: "There is scarcely a law made, an official chosen, or a policy discussed, concerning which the political party does not exercise the predominating influence." To the youth training for citizenship, therefore, it cannot but be a matter of some importance to know something of the history of political parties in the United States, something of the policies which the various parties have advocated, and particularly something of the methods by which the work of parties is accomplished.

411. Earliest Parties in the United States. It is unnecessary to our present purpose to inquire into the history of political parties in the United States before the constitutional convention of 1787. The debates of the convention and the discussion over the adoption and ratification of the constitution revealed the most important of the issues upon which

men were to divide for the first time in our history into two great political parties. The first question at issue between the two parties was the question of the acceptability of the constitution itself. We have already seen (§§ 100, 106) that in the constitutional convention, as well as in the state conventions called to ratify the constitution, two opposing opinions were strongly held. One party, to which the name federalist soon came to be applied, contended urgently for a strong central government, those holding extreme views even cherishing, it is said, some hope of a monarchy.[1] The antifederalists, on the other hand, were opposed to the constitution, the extremists wishing at most for a mere league between the thirteen independent states, and even the more moderate ones deeply distrustful of the new instrument, and willing to ratify it only because they despaired of obtaining anything more satisfactory.

412. Changes in Antifederalist Party. There was at first among the antifederalists, too little agreement to make them an effective political opponent. Almost their only point of agreement was their opposition to the constitution. Gradually, however, this opposition died away, and the party as a whole accepted the constitution unreservedly, merely insisting that the document should be so construed as to forbid any extension of the powers of the federal government beyond those expressly granted. In other words, the party became a "strict construction" party. Gradually, too, the discordant elements became more united, until finally fear of the growing power of the central government and sympathy with the principles that had led to the establishment of the French republic and its declaration of

[1] Johnston, *American Politics*, p. 15.

war against England, consolidated them into a political party with a definite body of opinion and a positive name of its own. They called themselves republicans or democratic-republicans, because of their sympathy with the French republicans, and under the leadership of Jefferson soon became a power to be reckoned with.

413. Policies. The federalists, as was just said, advocated first of all a strong central government; and, since a liberal construction of the provisions of the constitution was in general favorable to a wide extension of the powers of the federal government, the party was from the beginning a "loose or liberal construction" party. It was quite in accord with this policy of extending the powers of the federal government that the federalists should advocate, as they did, the imposition of a tariff for the protection of manufactures, the expenditure of public money by the general government on far-reaching internal improvements, and the establishment of a national bank. To all of these policies the democratic-republicans were strongly — at times bitterly — opposed. The party was the defender of the prerogatives of the states as against the federal government, in general the assertor of democratic principles, with an abiding faith in the ability of the people to manage their own affairs if let alone. To all extensions of federal power it was, in theory at least, unalterably opposed. Neither party, however, found itself able under stress of circumstances to hold unswervingly to its avowed principles. We shall find the federalists in the Hartford convention advocating extreme strict construction principles; while the democratic-republicans, on the other hand, once they had become the party in power, found themselves more than once compelled,

in order to adminster the government successfully, to sanction the widest extensions of federal authority. The policy advocated by the federalist party made it naturally the party of the mercantile and manufacturing classes and attracted in general the more conservative element of the population, who had been shocked by the excesses of the French revolution, and who attributed these excesses to the influence of democratic theories. It found its strongest support in New England and the middle states, where the commercial interest centred. The democratic-republican party was the party of the masses, the great agricultural portion of the community, and of the south.

414. The Federalist Supremacy. When the government was first organized under the new constitution, parties were in a state of considerable confusion. The federalists, to be sure, were already fairly well organized and possessed of a more or less definitely formulated policy; but the antifederalists had not yet learned to act together. The more moderate members of the party, if it may be called a party at all, at first voted generally with the federalists; and thus it came about that the federalists, though they were probably numerically the weaker party, came first into power. Washington, who had been elected by both parties and who was not a member of either, tried to maintain the balance as evenly as possible between the two parties, but was thrown, partly through Hamilton's influence but more through the exigencies of administration, upon the side of the federalists. Thus the federalists at first had the upper hand and were able to pass a number of important measures before their defeat in 1800 deprived them permanently of control of the government.

415. The Public Debt. Most important among these were the measures recommended by Hamilton in his famous report on the settlement of the public debt. Hamilton's recommendations were three in number: first, that the foreign debt of the confederacy should be paid in full according to the terms of the original contracts; second, that the "domestic debt" (that owed to citizens of the United States) should also be paid at par; and third, that certain portions of the debts of the several states should be assumed and paid by the United States as a part of its own debt. With the first recommendation all agreed, and it was passed without dissent. The second aroused much opposition, but Hamilton after long debate succeeded in convincing the majority that the credit of the new government depended upon the payment of the certificates at their full face value, and this recommendation also was finally passed. The third recommendation involved the question of the powers of the federal government, and the antifederalists were unitedly opposed to it. Before the matter was settled the arrival of seven new members from North Carolina, which had come into the union in November, 1789, so strengthened the antifederalists that the recommendation was defeated by a majority of two. It was only by means of a bargain with Jefferson that Hamilton finally secured the passage of a measure similar to but not exactly like that outlined in his original report. It was agreed that, in return for the passage of this measure, another should be passed locating the national capital permanently upon the Potomac after it had remained in Philadelphia for ten years.

416. Among other Important Measures passed through Hamilton's influence in spite of strenuous opposition were

one providing for the establishment of a United States bank and one for raising revenue by means of an internal revenue tax or excise. The bill for establishing a national bank raised again the question of the powers of the federal government and met with the opposition which that question always aroused. Nevertheless the bill passed both houses of the legislature, and received the president's signature after very careful deliberation, in the course of which he called for the written opinions of the members of his cabinet. The arguments then presented by Hamilton in favor of the establishment of the bank and by Jefferson against it have hardly been added to or improved upon since, although this question of a United States bank remained a bone of contention between the parties for half a century. Under Hamilton's leadership also was established, for the support of the general government, a system of indirect taxation which was destined to remain long in use. The two methods of raising money down to the present day (1904) for the support of the federal government — the tariff and the internal revenue tax — were initiated by him.

417. Decline of Federalists and Rise of Democratic-Republicans. We have seen that the contending factions included at first under the general term "antifederalists" soon coalesced to form the much better organized and much more formidable democratic-republican party. For this result the federalists themselves were in large part responsible. It soon became evident that the federalist party as a whole entertained views in regard to the powers of the central government which public opinion was not yet willing to sanction. It trampled too recklessly on the sentiment of local and personal independence, and was too willing to subordinate and

even to sacrifice the ever jealously guarded prerogatives of the states to the interests of the general government. The inevitable result was to alienate the more moderate section of the antifederalists, who had at first voted with their natural opponents. After Washington's retirement from office the federalists succeeded in electing his successor, Adams; but during his administration their injudicious exercise of power in the passage of the alien and sedition acts sealed their fate. In the presidential election of 1800 the democratic-republicans were successful, and the federalists never again came into power, though they remained a strong minority for some time after that election.

418. The Hartford Convention. It was the famous Hartford convention that gave the party its death-blow. This assembly of delegates from the New England states, the stronghold of the federalists, was called in 1814 for the purpose of conferring upon the subject of the grievances of these states arising out of the conduct of the war by the administration. The convention seems to have been entirely legitimate in its object; but the secrecy of its proceedings gave rise to a suspicion that its designs were treasonable, and it proved the political ruin of the party with which it originated. With the close of the war the federalist party disappears.

419. A Period of Transition. For a short time party spirit declined, and in 1820 Monroe was reëlected by every vote save one in the electoral college. It would hardly be accurate, however, to say that the democratic-republicans held the field. If the federalists toward the end of their career, moved by sectional interests, had adopted strict construction principles, it was no less true that the democratic-republicans had sanctioned a more and more liberal inter-

pretation of the constitution; so that by 1820 the attitude of the party on this question had changed completely. It was not so much an "era of good feeling," as this second administration of Monroe is frequently called, as it was an era of transition, in which old party lines had been to a great extent obliterated, and new ones had not yet been clearly drawn. Indeed, it was not an era of good feeling at all; but, so far, at least, as the political leaders were concerned, an era of very ill feeling, in which party divisions were based on personal animosities rather than principles.

420. Rise of Democrats and National Republicans. It was under the influence of the personal hostility of two great leaders, Clay and Jackson, that two distinct political parties were again formed about 1830. One of these, known henceforth as the democratic party, reasserted the principles of the Jeffersonian republicans. It demanded strict construction of the constitution, defended states' rights, and declared hostility to protection. The other party, called at first national republicans, later whigs, was formed out of those elements of the democratic-republican party that had adopted loose construction principles. To a considerable extent they maintained the traditions of the federalists as the democrats did those of the democratic-republicans. They believed, among other things, in internal improvements and protection of home industries by means of the tariff.

421. The Slavery Question. Meantime another question was forcing itself upon public attention — the question of the extension of slavery west of the Missouri. At first both parties tried to keep it out of politics, but in vain. In the end, they were obliged to adapt their policies to it. By 1852 the democratic party had become distinctly the pro-

slavery party; but the whigs were still attempting a policy of compromise — a policy which soon proved fatal to them. In the presidential election of 1852 they suffered a crushing defeat, and two years later the remnant of the party finally broke to pieces over the bill for organizing Kansas as a territory.

422. Rise of Republican Party. The democrats were not left long without an opponent, however. Very promptly a new party arose, which united the antislavery forces under the name of republicans. In the presidential election of 1860 dissensions within the democratic ranks gave the victory to the new party, and Lincoln was elected to the presidency. From that time until the present, with the exception of the two Cleveland administrations (1885–1889, 1893–1897), the republicans have retained control of the presidency.

423. Parties since 1880. The issues growing out of the civil war may be said to have been settled by 1875 or 1880. Since then the two great parties have remained the same in name. New issues have arisen, though no great all-absorbing question like that of slavery has centred public attention upon itself to the exclusion of everything else. Among the later questions upon which the parties have divided may be mentioned the tariff question, which was most prominent from 1880 to 1892; the question of the free coinage of silver, which held the foremost place from 1892 to 1898; and the questions growing out of the Spanish-American war, which have been uppermost since 1898.

424. The Work of Parties. Such is, in brief outline, the history of political parties in the United States. Let us now see something of the way in which parties have organized themselves for the work that they have to do. The politi-

cal party performs three functions. It is its business (1) to formulate the political principles of its members and to outline the policies which they wish to have carried out; (2) to provide the machinery by which its members may nominate candidates representative of their opinions; and (3) to organize the voters of the party in such a way that its candidates may, if possible, be elected. At the present time the first two of these purposes are effected through the agency of the party convention, the last through the permanent committee.

425. History of the Convention: the Congressional Caucus. The party convention has grown up gradually in the course of our party history. For the first two presidential elections there was no need for nominations, since all parties desired the election of Washington. In 1796 also, though there were two candidates, each was the unanimous choice of his own party, and it did not occur to either party to make a formal nomination. The first need for a nomination arose in 1800. The federalists had already agreed upon Adams and the democratic-republicans upon Jefferson as their respective candidates for the presidency, but the latter party was in doubt about its candidate for vice-president. Accordingly a meeting of the republican members of congress was called and nominated Aaron Burr. The meeting was notable in two respects: it was the first congressional caucus ever held, and it made the first formal party nomination. For the next four elections the candidates were regularly nominated by congressional caucuses; but this method of nomination, which had aroused opposition from the first on the ground that it deprived the people of the right to choose their own candidates, met with less and less approval as

time went on. In the election of 1824, when the democratic-republican party had the political field practically to itself, the nominee of the congressional caucus was defeated, and no more congressional caucuses were held.

426. Various Methods of Nomination. For a time there was no uniform method of making nominations, candidates being recommended by state legislatures and by popular assemblies held somewhat at random. In 1832 one of these assemblies, after indorsing the nominations previously made by the whigs, formulated a series of ten resolutions, which is notable as the first political "platform" ever adopted by a nominating convention. By 1840 these somewhat haphazard assemblies had become regular national conventions made up of delegates from nearly all of the states. In that year such conventions were held by both democrats and whigs, and the example has since been invariably followed by all political parties.

427. The Convention Perfected. In the years that have followed since its adoption the national convention has gradually perfected its form. To quote Mr. Bryce: "The early conventions were to a large extent mass meetings. The later and present ones are regularly constituted representative bodies, composed exclusively of delegates, each of whom has been duly elected at a party meeting in his own state, and brings with him his credentials." [1]

428. The Convention: Its Organization and Work. At the present time the national convention of each of the parties meets in the summer preceding a presidential election. Each state sends twice as many delegates as it has senators and representatives in the national legislature. Occasionally a

[1] Bryce, Vol. II, p. 178.

state's whole delegation is chosen by the state convention; but generally the state convention chooses four delegates (corresponding to the two senators), while conventions in the congressional districts choose two each. There are four regular convention committees — on organization, on credentials, on rules, and on resolutions. Usually about two days are consumed in the preliminary work of organization. About the third day the committee on resolutions reports the "platform" — a formal declaration of the principles of the party and a statement of the issues for which it stands in the campaign. This may be adopted with little or no opposition, or it may call forth much debate and may be accepted only after considerable modification. The platform once accepted, nominations for candidates for president are in order, and these are made by the state delegations as the roll of the states is called. After a candidate for president has been selected a candidate for vice-president is chosen, and the work of the convention is done.

429. Party Differences. The conventions of the two great parties employ practically the same methods. They differ, however, in two respects. In the democratic national convention the vote is by states, *i.e.*, the entire state delegation votes as the majority may decide, although more than one candidate may be voted for if the majority agrees to it. The democrats also require a two-thirds vote for nomination. In the republican convention, on the other hand, each delegate may vote regardless of the wishes of the majority of the delegates from his state; and a majority vote of the delegates constitutes a nomination.

430. State and Local Conventions. The convention system has been universally adopted also in state and local

politics; and practically all nominations for important elective offices, except those for president and vice-president, are made in the state and local conventions. The delegates to the state conventions are chosen by the local conventions; while the delegates to the local conventions — city, county, and even congressional district conventions — are chosen in the primaries. The procedure in these minor conventions is modelled closely on that of the national convention.

431. The Committees: National Committee. When once the nominations are made, the conduct of the campaign is entrusted by each party to a series of permanent committees — one for the country at large and one for each state, county, city, town, and ward — which together constitute what is often spoken of as the "machine." The national committee is composed of one member from each state selected either at the national convention, usually after the wishes of the nominees have been consulted, or at the state conventions, which are held just before each national convention. This committee fixes upon the place and time for holding the national convention and issues the call for that meeting. It also collects and disburses the money necessary in conducting the campaign. Money for campaign purposes is obtained by contributions from interested members of the party. Part of it is handed over to the local committees and part retained by the national committee for the purpose of furnishing campaign literature and paying speakers to tour the country.

432. Lower Committees. Since state and local elections occur much more frequently than national ones, the work of the "lower" committees is more nearly continuous. The state committee, made up of representatives from the coun-

ties, names the time and place for the state convention, oversees the local committees, and takes charge of state and congressional elections. The "lowest" committees — county, city, town, and ward — are in many respects the most important in the whole system, since they are able to bring a personal influence to bear directly upon the voters. This they do not only at elections by seeing that as large a vote as possible is cast for the party candidates, but in the primaries, where they exert themselves to the utmost to secure the selection of such delegates to the "higher" convention as meet their approval.

433. The Primary: Its Importance. If the student has followed the foregoing discussion of the convention and committee system, he must have become aware that the vitally important point in the whole system is the primary, as the mass meeting of the party voters in a definite locality is called. It is here that the whole political machine is set in motion. When once the voters in this primary assembly have chosen their delegates to the next higher convention, the matter is out of their hands; and if they have erred in this initial choice, if they have allowed the primary to be dominated by a corrupt "machine," there is no remedy. On election day the voter must either cast his ballot for the candidates who have been nominated in the regular way by their respective parties, or he must waste his vote altogether.

434. Necessity of Organization. Under present political methods the success of our government, national and local, is dependent upon the nomination of satisfactory men for office; and the nominations, as we have already seen, must be controlled, if at all, through the primary. To this fact men of questionable political methods are keenly alive.

They know that unless they can control the primary their occupation is gone; and they attempt, therefore, by a carefully planned organization before the caucus is called, to secure the appointment of delegates representing their peculiar notions of government. If they are to be prevented from securing the adoption of their methods, men of higher political ideals must organize and control results. Too often such men not only fail to make preparation, but even stay away from the caucus. Those principles which secure control of the caucus can easily control the rest of the political machinery, which may be so dangerous and yet is so indispensable in a representative form of government. No one who remains away from the caucus when he might attend, has any right to blame others for the results of his own negligence. One man at the caucus has more power in shaping the policy of his country than ten men at the polls on election day.

435. The Necessity of Parties. The question may be asked: "What is the necessity for political parties? Could we not do as well without them?" A party may be generally defined as a union of individuals holding the same general opinions upon the questions named in the constitution or platform of the organization and striving to carry these opinions into effect. This definition suggests some of the facts which make political parties a necessity. It suggests first that different men hold different opinions in regard to political affairs, as they do in regard to other things; and these different opinions find voice through the political party. Furthermore it suggests that men naturally desire to see their political beliefs embodied in the actual government by the nomination and election of representatives who hold identi-

cal or at least similar views; and this work of nomination and election is one that can in general be accomplished only through the political party.

436. The Duty of the Citizen. It is the plain duty of every American citizen to belong to some political party, to attend its primaries, and to take an active part in them. If the principles are not satisfactory and the policies need changing, then it is his duty to take an active part in changing the principles and policies. The primary is the only purely democratic meeting in state and national politics. There it is every man's privilege to express his views, and to form, in the interest of good government, factions that are feared by corrupt party leaders. If he wishes to do this successfully, let him learn to debate. Let him learn to express himself clearly and forcibly. Let him study the great speeches that have changed the destiny of mankind. Let him take an intelligent part in the affairs of his party, and the country will be safe.

Library References. — Ashley, §§ 151–161, Chaps. VII–IX, XXIII, XXIX; Macy, Chaps. XLII–XLVI; Macy, *First Lessons*, Chap. XXVII; Fiske, pp. 240–241, 271–281; Hinsdale, p. 112; Bryce, Vol. I, Chap. XLVI, Vol. II, Parts III–V; Johnston, *American Politics;* Wilson, §§ 873–880; Montgomery; Dole, Chaps. XX–XXII; Lalor, Articles on *Party Government in the United States, Nominating Conventions, Abuses in Politics*, etc. McMaster; Schouler; Channing; Harper's *Book of Facts*.

QUESTIONS ON THE TEXT

316. What is meant by "strict constructionists"? Under what names have they been known at different times in our history? Who were their opponents, and what have they been called?

317. Of present day political parties, which represents the "strict constructionists"? Are their opponents still represented?

318. What three recommendations did Hamilton make to the

first congress concerning the finances of the confederation? Discuss the fairness of each.

319. What was the origin of our present system of internal revenue? of our tariff?

320. What great issues have played an important part in the political history of our country?

321. Explain the term "rotation in office" and "tenure of office" as applied to government service.

322. What is meant by the "spoils system"? When was it introduced?

323. Give the successive steps in the process of nominating and electing (1) a candidate for the presidency; (2) a candidate for membership in the house of representatives.

324. What is a party "platform"?

325. Define caucus; convention; primary.

326. Explain the importance of the caucus as a factor in a representative form of government.

327. Mention two benefits and two evils due to the prominence of political parties in our system of government.

328. Give arguments either to establish or to controvert the following: "Parties appear to be necessary in all free governments."

CHAPTER XXII

INTERNATIONAL LAW

437. International Law has been defined as "the system of rules that civilized nations acknowledge to be obligatory as their common law for regulating their mutual rights and duties in peace and war." This body of law has come into existence within comparatively recent times. When Christian states began to communicate with one another they soon realized that they each had certain rights and certain corresponding obligations. Moreover they soon recognized that as nations have a common nature and a similar end to fulfil, there is an equality of rights between them, and that by observing the common rules growing out of the principle involved in the golden rule they promote the interest and advantage of all.

438. The Origin of International Law has already been intimated. It starts with intercourse, which begins when a state has entered into official relations with other states. It is not enough for an individual to land at a foreign port with a cargo of goods; that does not constitute intercourse in the legal sense. It is only when nations have entered into official commercial or political relations, usually by treaty, followed by an exchange of ministers, that true intercourse is established. With this intercourse comes a recognition of mutual rights and obligations, and certain rules are observed in the relations between states. As nations advance in civilization they tacitly or by formal agreement renounce

certain barbarous practices and thus add a number of new rules to the body of international law. Most of the rules observed by civilized nations can be traced to one of two sources. They are either the outcome of treaties by which "states acting in pairs or groups have agreed to be bound by certain principles in their relations with each other," or they have found their way into the law books as the result of certain formal customs growing out of international action.

439. Compared with Municipal Law. When this branch of law is compared with the ordinary law governing the individual in his relations to the state or its subdivisions, certain differences appear (Chapter XXIII). One noteworthy difference between them is the lack of precision and the comparative uncertainty of international law. "There is no authority set above the nations whose command it is" and its enforcement, therefore, depends largely upon the moral sentiment of the states that have consented to it. It is true that it is sometimes confirmed, and violations of it are punished by municipal laws, as in the United States; and there always remains the last means of securing its observance, namely, war. These methods, however, are inadequate and unsatisfactory as compared with the means of enforcing municipal law. The legislatures of states are ever ready to make or to change a law governing the individual, but there is no similar body that can be importuned to make laws regulating the relations of nations. When there is added to this the lack of a regular judicial system to pass upon violations of international law, its rules would appear to have no very strong claim upon the consideration of the civilized world; but the sentiment of justice, which exists in every human

breast alike, permeates nations also, and the spirit of fair play gives to the rules of international law an authority in some cases as powerful and far reaching as that of municipal law.

440. Sovereignty. Before entering upon a consideration of some of the rights and obligations recognized by the law of nations we must return to our definition of sovereignty. In § 30 we found that sovereignty is the supreme power by which a state is governed. A completely sovereign state is one that possesses the supreme power of governing itself in all its relations, internal or external. Such a state may establish its own form of government; may make and enforce its own laws, impose taxes, and exercise the right of eminent domain; may support military and naval forces; may plant colonies, establish protectorates, and acquire new territory; may enter into relations with other nations; and may make war and peace. Such a state may also surrender its sovereign rights and be merged in another state, or it may surrender a part of them and become a member of a federation or a confederation; but if, by such surrender, it resigns the right to enter into relations with other nations and to make war, it thereby loses at least its external sovereignty, and the law of nations is no longer applicable to it. So long as a state retains the power of self-government in its relations with other states, it remains, in the view of international law, a sovereign state and may claim equality of rights with all other sovereign states.

441. Recognition. When a community in the process of its development has attained "an independent existence, performing the functions of a state and able to take upon itself state responsibilities," it is entitled to

recognition [1] as a state by other sovereign states. It remains, however, the prerogative of every nation to decide for itself whether an independent state be really established, and it may, therefore, recognize a community where the new order of things has not yet been fully accepted. On the other hand, recognition of a revolted colony or of a revolutionary party while armed strife is still in progress is evidence of hostility toward the mother country or the disturbed state, and may be made a ground for war. When a state has gained recognition from one or more sovereign states, it is entitled to enter into relations with the states thus recognizing it; but it is not admitted into full membership in the society of nations until it has been recognized by all.

442. Jurisdiction. Every state possesses territory over which and within which it exercises sovereign rights. Such exercise of a state's authority is called its jurisdiction. A state acquires territory in a variety of ways — "by discovery and possession; by purchase; by conquest; by treaty; and by prescription, or uninterrupted and exclusive possession during such a length of time as to make it unreasonable for another nation to set up a prior or an adverse title." The territory of a state includes (1) not only all the land but also all the waters (interior seas, lakes, and rivers) lying wholly

[1] In the matter of recognition, the United States has borne an important part. Before the American revolution there was no theory of recognition. The attitude taken by the United States towards France during the French revolution, in recognizing any government accepted by the French people, was a decided step in advance; but it was not until the doctrine of neutrality had been defined by Washington's cabinet, in the proclamation of 1794, that the doctrine of recognition could assume a definite form. The United States has always taken the high ground of international right, and it was this principle that actuated President Monroe in his proclamation in 1823 recognizing the South American republics in their struggle for independence. Paxson, F. L.: *The Independence of the South American Republics.*

within its boundaries; and (2) the sea to a distance of about three miles from the coast. Claims to exclusive jurisdiction over littoral seas or bays have usually been held invalid where such waters must be used by another nation in order to obtain access to its territory from the high seas, or where they are not somewhat narrowly enclosed by promontories belonging solely to the claimant. Where a river forms a boundary the jurisdiction of the state extends to the middle of the stream or to the middle of the channel that is best adapted for navigation. Over all its own citizens within these territorial limits and over all others who may be sojourning within its borders either as alien residents or as travellers, the state exercises jurisdiction. It exercises also a certain amount of exterritorial jurisdiction — *e.g.*, by the rule of international law that makes inviolable the persons of diplomatic agents, together with their embassies, legations, residences, and all property belonging to them in their diplomatic capacity.

443. Intercourse has already been defined. It is not something that can be demanded as a right except in extreme cases, as when "one nation cannot do without the products of another, or must cross its borders to get at the rest of the world." On the other hand, when it is once granted, it cannot be terminated without a violation of international law. China or Japan could not refuse intercourse now without precipitating a war, since every nation having intercourse with those countries now regards it as a precious right to be safeguarded by every possible means.

444. Diplomatic Agents. For the purpose of facilitating intercourse, nations have found it advisable to maintain in foreign countries agents to represent them and to further

their interests. These agents belong either to the diplomatic service or to the consular service. Diplomatic agents are divided into four classes: (1) ambassadors, legates and nuncios of the pope; (2) ministers plenipotentiary and envoys; (3) ministers resident; and (4) chargés d'affaires. The first three classes, though they differ in rank, perform the same sort of service. It is their business to safeguard the general and more important interests of the nation that they represent, and they not infrequently negotiate important treaties between their own countries and those to which they are accredited. In the United States these agents are appointed by the president with the advice and consent of the senate, and are under the general direction of the secretary of state. They reside at the capital of the country to which they are accredited or accompany the court of the sovereign. Partly as a mark of respect to the country which they represent, and partly in order that they may be independent of the foreign government and transact their business with the greatest convenience, they are accorded certain privileges. Not only are their persons inviolable so that no force can be employed against them by public authority or by private persons without violating the rules of international law, but they are not even subject to the civil or criminal jurisdiction of the courts in the country where they reside. Their families, including even the domestic servants, are likewise inviolable, and their goods are exempt from local jurisdiction.

445. The Consular Service. Consular officers of the United States are divided into two classes, principal and subordinate. The principal officers are consuls-general, consuls, and commercial agents. Subordinate officers are vice-consuls-general, deputy consuls-general, vice-consuls, deputy consuls,

vice-commercial agents, deputy commercial agents, consular agents, and consular clerks. There are also interpreters, marshals of consular courts, and office clerks. Commercial agents are appointed directly by the president; all others are appointed by and with the advice and consent of the senate. It is their business to promote the commercial interests of their own state and to protect its citizens in foreign countries. These officers make monthly reports noting improvements in manufacturing and in agricultural processes, and give information regarding good markets for our products and the best markets in which to purchase foreign products. Occasionally consular officers are charged with the performance of diplomatic as well as consular functions.

446. Treaties. The rights to which every state is entitled are subject to more or less modification. A nation may sacrifice many of its privileges either by wilful abuse of them or by a definite and voluntary abandonment of them. They are often greatly modified by treaty. A treaty is a compact made between two or more sovereign states by their properly recognized authorities or by their duly authorized agents. Not all treaties are binding. They must conform to certain rules prescribed by law. They must be made through the constituted authorities of the nations, or by "persons specially deputed by them for that purpose." Thus, if the power to make treaties be vested in the legislature, a treaty made through the executive department would be null and void. Similarly, an agreement whereby the treaty-making power criminally and flagrantly sacrifices the interests of the nation has no binding force. In short, the same general rules apply to treaties that apply to ordinary contracts between individuals (Chapter XXIII). An

agreement, therefore, made by force or fraud or entered into to commit an unlawful act is not recognized as having binding force. Unless some other time is agreed upon, treaties go into effect when they are signed by an authorized agent. In case a treaty deals with a subject already the subject of earlier treaties, if there be no provision in the later treaty to the contrary, it is regarded either as explaining or as abrogating the earlier ones.

447. Pacific Methods of Redressing Injuries: Arbitration. Between nations, as between individuals, it is inevitable that disputes should arise and that injuries should be given and received. War is the ultimate means of securing redress for such injuries and should be resorted to only when all pacific methods of obtaining satisfaction have failed. Various peaceful methods of settling disputes have been found. Among them the method of arbitration is of growing importance. When this is resorted to, the nations concerned in the dispute agree to submit their differences to an independent tribunal and to accept its decision. In 1899 an international peace conference was held at the Hague, which resulted in the establishment of a permanent international court of arbitration. This court cannot, of course, compel nations to bring their differences before it for settlement; but it has exercised no little influence toward averting war.

448. Other Methods. Besides arbitration a variety of other measures may be employed for obtaining satisfaction from an offending nation before recourse is had to war. Among these are embargo, reprisal, and retorsion. An embargo consists in detaining vessels in port either for political purposes or by way of reprisal. An embargo may be either civil or hostile. A nation lays a civil embargo by way of

self-protection (*e.g.*, to protect its commercial vessels from capture); a hostile one by way of reprisal in order that an offending nation may be persuaded to do justice. Literally the word reprisal signifies simply retaking what is one's own, but in international law its meaning has been extended to include reimbursement for injuries sustained. Thus property may be seized and retained until redress is obtained; or sold, if the offending nation refuses to render satisfaction. Retorsion consists in the adoption by an injured nation of retaliatory measures toward the offender — "treating it or its subjects in similar circumstances according to the rule which it has set."

449. War. When all peaceful methods of obtaining satisfaction have failed, there remains to every nation a last resort, namely, war. War is "an interruption of a state of peace for the purpose of attempting to procure good or prevent evil by force." A war is said to be just when it has a good cause and a proper and sufficient object. This is another way of saying that it may be waged (1) to defend any right which the state is bound to protect, *e.g.*, to defend its territory from invasion or protect its citizens when they are maltreated by a foreign nation; (2) to redress a wrong, *e.g.*, an insult to its flag, its ambassador, or its good name, or a violation of treaty rights; (3) to prevent apprehended injury, *e.g.*, to prevent a disturbance of the balance of power or to right great and flagrant wrongs against religion or liberty, since these wrongs may affect all states. A formal declaration of war is no longer necessary. The state, however, which commences the struggle, must indicate in some way its changed feelings. This may be done by withdrawing its ambassador or by refusing intercourse. It must also give its

own subjects and neutrals warning as to the changed relations, in order that the former may not suffer in property or person, and that the latter may act accordingly.

450. Effect on Subjects of the Enemy. The nations engaged in hostilities are called belligerents. If the subjects of one belligerent nation be residing or travelling in the territory of another, they are usually permitted to remain and to retain such property as they possess, provided they conform to the rules of conduct prescribed for them; but they may be required to leave the country within a specified time. Under such circumstances they are given a reasonable time to effect the removal of their property. All trade between belligerents ceases, and any contracts or agreements entered into between subjects of the belligerent countries after the war breaks out are void. The law, however, allows the creditor to collect any debts which may have been contracted before the outbreak of hostilities.

451. Combatants and Non-Combatants. A distinction is made on both land and sea between combatants and non-combatants. A combatant has been defined as a person "authorized by a government to wage war," *i.e.*, any person "directly engaged in carrying on war, or concerned in the belligerent government, or present with its armies and assisting them." The passive inhabitants are non-combatants. In this class are included any persons who may be present with an army for the purpose of humanity or religion, such as surgeons, nurses, and chaplains. There is a difference, of course, in the treatment accorded to these two classes. Combatants are liable to capture or even to death, if they refuse to yield; but they may be exchanged when captured for captives taken by their opponents, or they may

be given up for a ransom. While in captivity they are entitled to maintenance in comfort at the expense of the state effecting their capture. Officers and others whose word can be relied upon may be released on their parole not to serve during the war, or until exchanged or ransomed.

452. Their Property. All the property of combatants is liable to plunder and confiscation, as well as all public moneys, military stores, and buildings belonging to either belligerent. Property that does not contribute to the prosecution of the war should be exempt from violation. Non-combatants who remain quiet and take no part in the hostilities are not liable to molestation. Their property is not subject to capture except in extreme cases. Often it is taken at a fair value to satisfy the immediate needs of a hostile force. In rare cases it is taken without compensation, although even then in some cases receipts are given for the property.

453. Cruel and Unfair Methods Forbidden. The law debars belligerents from using certain kinds of weapons or employing certain stratagems in maintaining hostilities. Any weapon which inflicts needless pain or produces a lingering death is prohibited, as is also the use of poison or of poisoned weapons. Nations are bound to maintain their plighted faith and are not allowed to importune or seduce the subjects of another to betray their country. If savage or semi-barbarous troops are employed by a civilized nation, it is required that they be kept under such control that they will conform to the ordinary rules of modern warfare.

454. Truce. Belligerents may agree to a temporary suspension of hostilities at one or more places. Such an agreement is called a truce and becomes binding upon the parties thereto "from the time when they have agreed to its terms,"

and upon private citizens when they have had time to be informed of its existence. The existence of a truce does not prevent either party from making preparations for a renewal of the struggle.

455. Siege. In conducting a siege the property and persons of non-combatants cannot be so readily safeguarded as in other cases. The law does not permit the bombardment of open, undefended towns. Usually the bombardment of a fortified or defended town is preceded by a notice. In that case the inhabitants may secure some protection for their lives and property. In case of bombardment, steps should be taken to spare so far as possible all buildings devoted to religion, art, science and charity, and all hospitals, provided such buildings are not used for military purposes. Usually the greatest loss of life and property among non-combatants follows when a place has been taken by assault, as it is often difficult to determine when all resistance has ceased. All killing which takes place after resistance has been overcome is murder. The plunder of fallen towns by victorious troops is forbidden.

456. Warfare with Barbarous Nations. In waging war with savages, a Christian state is sometimes tempted to go back to barbarous or savage methods of warfare. Even here, where the provocation may be great, the rules of land warfare require the state to show good faith and humanity; to treat the prisoners well; to respect treaties and truces; in short, to deal with them as they would with a civilized state no matter how barbarous or inhuman their conduct may be.

457. Captures on the Sea. The laws as to the capture of property on the sea differ considerably from those in use on land. All property of a belligerent nation or its subjects is

here looked upon as lawful prey, no distinction being made between the property of combatants and non-combatants. The precise rules governing its capture will be stated in connection with the rights and obligations of neutrals. Such property when captured is called a prize, and, when passed upon by a court, becomes the property of the captor.

458. Privateering. It has been the custom in the past for each belligerent to grant letters of marque and reprisal to the owners of private vessels, authorizing them to seize the property of either belligerent on the sea. Such vessels are called privateers. At an international congress held at Paris in 1856 it was agreed by all the great nations except the United States and Spain that privateering should be abolished. The United States also was willing to abolish privateering on condition that all private property except contraband of war should at all times be exempted from seizure on the high seas, but this condition was not accepted by the congress. At the outbreak of the Spanish-American war in 1898 our government issued a decree forbidding privateering.

459. Blockade. Usually a declaration of war is followed by an attempt to blockade the ports of the enemy. This too is designed to interfere with the commercial intercourse of nations. A blockade consists in "obstructing the passage into or from a place on either element, but is more especially applied to preventing communication by water." Any vessel attempting to pass a blockade is liable to capture. No blockade, however, is regarded as binding, unless there be present a sufficient force to render access dangerous. The name of paper blockade has been given to all so-called blockades that do not satisfy this condition. Due notification must be given of a blockade, and vessels in port before a

blockade is declared are usually allowed to proceed to their destinations.

460. Rights of Neutrals. Some of the most difficult of international questions have arisen in connection with attempts to define the rights of neutrals. A neutral state has been defined as "one which sustains the relations of amity to both the belligerent parties, or, negatively, is not an enemy; . . . one which sides with neither party in a war." A nation may preserve a *strict* neutrality or an *imperfect* neutrality. In the former case it stands absolutely aloof, rendering no assistance to either. In the latter case, however, it may impartially allow both belligerents to transport troops across its frontiers or may furnish one, according to previous engagement, a certain contingent of troops or vessels for prosecuting the war. Neutrality entitles nations to certain privileges, such as the right "to preserve their territory inviolate," and "their sovereignty uninvaded." To this end they may demand that no battles be fought within their jurisdiction, or that no troops or supplies be carried through their territory. They may demand also that the same respect be shown their flag, their representatives, their property, their prerogatives, as was shown in times of peace.

461. Property of Neutrals. The law governing the property of neutrals is most important. Their property, as in time of peace, is free from molestation wherever it may be found, unless it is contraband of war. It is difficult to define with exactness what is contraband, as the practice of nations has varied. It is usual to regard as contraband anything that "appertains immediately to the uses of war," such as firearms, bullets, and powder. Treaties are often made between nations, specifying what articles will be treated by

them as contraband in case of war. It is usual, moreover, for belligerents to issue a list of articles which they intend to treat as contraband. A neutral cannot send these articles into either country without wronging the other nation, and therefore they become liable to capture. If neutral goods be found on an enemy's ship they are still free from capture, although the ship itself is lawful prize. The law also protects the goods of an enemy on a neutral vessel, always excepting contraband of war. Both belligerents may exercise the right of search to enforce these rules. They may overhaul a neutral vessel, excepting a public vessel, examine her papers and her cargo, and on her refusal to submit to such examination, may take possession of her as a prize.

462. The Duties of Neutrality are largely implied in the term "neutral." Neutrals must discharge toward both belligerents all those duties which humanity requires; must not permit one to transport troops across their territory, unless this privilege is accorded equally to the other; and must not loan money, supply troops, or otherwise assist in the prosecution of the war. The law, however, makes a careful distinction between the obligations resting upon the nation and upon the individual inhabitants, and does not regard it as a breach of neutrality for the individual to loan his money, sell military supplies, or even lend his assistance in person to the prosecution of the struggle.

463. Intervention. In case a war is conducted in too cruel a manner or is wantonly and unnecessarily protracted, neutral nations may intervene. Intervention may, however, be resorted to on other grounds as well, as, for instance, "to preserve sovereign rights or interests, to maintain the balance of power, to prevent iniquitous revolutions, or to suppress

crime of governments against their peoples." The necessity of preserving the balance of power has been the most common ground for interference with each other's affairs on the part of European nations. According to this principle no European nation must make or attempt to make acquisitions that are likely to prove dangerous to the independence, influence, or territorial integrity of another. As yet the application of this theory has not been extended beyond the continent of Europe. Intervention may, of course, always be resisted, either by the nation directly affected by it, or, under some conditions, by other nations. Thus the Monroe doctrine was an assertion of the right of the United States to resist foreign interference with American affairs, as well as of its right to intervene for the purpose of preventing such interference. Intervention is always interference and is justifiable only in extreme cases. As a rule, it is "illegal, impolitic, and inexcusable."

464. Mediation. International controversies are sometimes settled by mediation on the part of neutral nations. Mediation is very similar to the attempts of private persons to reconcile two friends who have had a dispute. It may be sought by one or both of the parties concerned or it may be offered by the neutral nation. It is, of course, necessary that the nation which acts as mediator shall be friendly, impartial, and acceptable to both parties. Ordinarily it is not incumbent upon the nations involved to accept an offer of mediation, though the offer of a powerful nation may under some circumstances amount practically to compulsion. Neither is it ordinarily incumbent upon the parties to the controversy to accept the advice of the mediator. Nations have in general been careful not to offer mediation inopportunely, and

such offers must always be courteously received, even though they may not be accepted.

Library References. — Ashley, §§ 625–627; Wilson, §§ 1216–1217; Woolsey, *International Law*; Lawrence, *International Law;* Dole, Chaps. XLII–XLV; Lalor, Article on *International Law;* Standard Dictionary; Encyclopedia Americana, Article on *Consular Service of the United States.*

QUESTIONS ON THE TEXT

329. Define nation; sovereignty; ambassador.

330. Over what territory and waters has a sovereign state absolute jurisdiction?

331. Distinguish between the character of the duties performed by a foreign minister and the character of the duties performed by a consul. In what way are these officers chosen?

332. What are the chief duties of an ambassador? Explain why ambassadors are not subject to the laws of the countries to which they are sent.

333. When was the Hague conference formed? What was the object of forming an international court of arbitration?

334. What is an embargo? What is its object? How many kinds of embargo are there?

335. Mention some of the causes that would justify a nation in resorting to war.

336. Under what obligations to other nations is a nation going to war? Is a declaration of war necessary to a state of war?

337. State the essential rights of non-combatants in time of war.

338. Define contraband of war; imperfect neutrality; non-combatants.

339. Has a nation a right to raise a "black flag" when going to war with another? Why?

340. How do the laws governing the capture of the property of a belligerent on sea differ from those governing its capture on land? Define belligerents.

341. What is a blockade? Define a paper blockade. Is a paper blockade binding?

342. What is meant by neutrality in case of war between foreign powers? What restrictions does neutrality impose?

343. State the Monroe doctrine. Why is its maintenance important in this country? What are the dangers from a too extensive application of it?

344. What is the rule regarding neutral goods on an enemy's vessel? An enemy's goods on a neutral vessel?

345. Define intervention. Under what circumstances may neutral nations intervene?

346. What is meant by the "balance of power" in Europe? Is there any principle corresponding to it on this continent?

CHAPTER XXIII

MUNICIPAL LAW

465. Statement of Subject. Intercourse between nations is regulated by international law. Similarly, the intercourse of every state with its citizens and subjects and of those subjects with each other is regulated by law, and to this is applied the term " municipal law." In studying the constitution of the United States and those of the different states, we have been dealing with one portion of municipal law as it exists in this country. In addition, however, to these fundamental laws outlining our frame of government and guaranteeing to individuals certain vitally important rights, there exists a great body of law intended to define clearly and to secure, on the one hand the rights of individuals in their relations with the state and with each other, on the other, the rights of the state, *i.e.*, of the public, as against individuals. It is the aim of this chapter to direct attention very briefly to the most important of these provisions of municipal law.

466. Municipal Law and Individual Rights. One principal object of municipal law has been the preservation and vindication of individual rights, not only of those fundamental rights guaranteed in this country by our federal and state constitutions, but also of the innumerable rights arising out of the relations of husband and wife, parent and child, guardian and ward, and master and servant. If these rights were simply recognized as existing, without more definite prescription, by rules emanating from the legisla-

ture or other sources, of the precise manner in which they are to be safeguarded, the recognition would avail little. Hence the necessity for this great body of municipal law.

467. Common and Statute Law. In an earlier chapter (§ 16), we glanced at the way in which individual rights have developed in organized society. As these rights gradually gained general recognition, society began to follow certain rules in punishing violations of them. These rules became in time thoroughly established customs, and finally received judicial sanction in the decisions of the highest courts. It is these unwritten laws, which have originated in this way, that now make up what is known as our common law. In addition to this common law the state has prescribed certain rules of conduct, sometimes modifying, sometimes supplementing it. These written enactments constitute the statute law. Many of the rules of common law have been superseded by them, and the practice has been in some cases reversed.

468. Civil and Criminal Law. The state recognizes a very important distinction in applying these rules to its citizens. Certain offences are in the nature of private wrongs, as when one person interferes with another's rights of property in a breach of contract, or injures his reputation by slander. On the other hand, there is another class of offences, such as murder and burglary, which are looked upon as public wrongs. These "reach through and beyond the individual wronged to the social fabric of which he forms a part, and violate the peace and order of the state." The former are termed civil offences; the latter criminal offences or crimes.

469. Property and Estates Defined. To the protection of the right of private property and the redress of the wrongs by

which it is violated, the law devotes the greater share of its attention. Property may be of two kinds, real and personal. Real property is immovable property, including land and whatever may be growing or erected thereon, and all that is beneath the soil; personal property is movable property — such things as may be taken by the owner wherever he goes. The law carefully distinguishes between the property itself and the interest which the owner may have therein. This interest is called an estate. These estates may be of different kinds. There are but two recognized interests in personal property, viz., an absolute and a qualified estate. In the former the estate cannot be lost without some act on the part of the owner, whereas the latter may be lost without his act or default. Not all the different estates in real property need be considered here. The more important are an estate in fee, an estate for years, an estate for life, and an executory estate. An estate in fee is one given to a person and his heir "absolutely without any end or limit." An estate for years is an interest limited by a term of years. An estate for life is limited by the life of the holder or some other specified person. An executory estate is an estate created to commence at some future time.

470. Contracts: Defined and Classified. A contract is one of the means of acquiring an estate in both real and personal property. A contract is "an agreement between two or more persons, upon sufficient consideration, to do or not to do a particular thing." Contracts may be classed as to form as written or oral, and as to the time when they go into operation as executory or executed. An executed contract is "one in which nothing remains to be done by either party, and where the transaction is completed at the moment the

agreement is made." An executory contract is an agreement to "perform some future act." A sale accompanied by delivery and payment would be an example of the former; an agreement to build a house within a year, of the latter. Contracts may also be classed as express and implied. An express contract is one where the terms are "openly and fully uttered and avowed at the time of making." It is not necessarily a written contract. A formal contract is an express contract, written or oral. A lease would be an example of this kind of contract. An implied contract is one that is largely a matter of inference and deduction. When one person hires another to perform a piece of work, nothing may be said as to the remuneration. The contract is an implied one in so far as hiring presupposes payment for the labor.

471. Conditions Governing Contracts. Every contract must satisfy four conditions in order to be enforceable. (1) The parties contracting must be competent. Four classes of persons are usually regarded as incompetent: (*a*) infants, (*b*) married women, (*c*) insane persons, and (*d*) persons under guardianship. The term "infant" is applied to persons under a certain age, usually twenty-one. An infant, however, may contract for the necessaries of life. A married woman may also make contracts which involve her own property. The term "guardian" is applied to any one upon whom the care of the person or estate of a minor has been conferred by law. Any contracts involving the minor, or ward, as he is called, are made by the guardian. (2) If a contract be made under fear of injury it is voidable at the pleasure of the contracting party. (3) A contract must be based on a sufficient consideration. This may be of two kinds: pecuniary, or convertible into

money; or founded on mere love or affection or gratitude. There must be a subject-matter to be contracted for. In other words, the parties to a contract must make an agreement as to property, "whether it be a material object or a mere right and obligation." (4) Finally there must be "an actual contracting by proposal on the one side and acceptance on the other;" the parties must mutually assent to the agreement. The other rules which determine the validity of a given contract depend upon the law of the place where the contract is made and is to be performed. The law of all states generally requires that contracts involving land or running over a long term of years shall be written.

472. A Breach of Contract involves a civil suit, but the law governing such an action is determined entirely by the place where the suit is brought. A statute of limitations requires that the suit be brought before the court within a reasonable time. The law, generally speaking, knows no other remedy than the payment of money for a breach of contract. This kind of remedy is often inadequate or unsatisfactory, as no amount of money can compensate the aggrieved party under certain conditions. The fulfilment of the letter of the contract or cessation of a particular line of conduct is often the only just means of settling the difference. The general law of contract as outlined above applies alike to real and personal property. There are so many points of difference, however, in the laws governing the various estates in real and personal property that it is necessary to consider the two kinds of property separately.

473. Real Property: Deeds and Mortgages. Two common methods of transferring estates in real property are by deeds and by mortgages. A deed is a written instrument transfer-

ring an estate to another to take effect during the lifetime of the grantor. A deed may either create an estate where none before existed or modify one already created. To the former class belong deeds of bargain and sale, gifts, grants and leases; to the latter, assignments. Besides conforming to the general conditions governing contracts, these instruments must be written, must be set forth legally and in an orderly manner, must be free from any erasures or interlineations not explained in the instrument, and must be sealed and delivered. These are signed by the grantor, and must be acknowledged and witnessed. In some cases, when the transfer is made by a married man, the wife also must sign the instrument. If she fails to sign it, she still retains in the property her dower interest which she acquired by marriage. In no case can any estate be transferred by a deed without the delivery of the same during the lifetime of the grantor. Although recording a deed is not essential to its validity, it insures the grantee against the claims of the grantor's creditors and of his subsequent *bona fide* purchasers or mortgagees. In other words, it may prevent a second transfer or secure the first purchaser in the possession of the property. A mortgage is a written instrument given as security for money loaned, whereby the debtor creates an estate in real property conditioned to become void on the payment of the obligation. In case the person giving a mortgage fails to meet the obligation incurred thereby, his property is sold to satisfy the debt. This procedure is called foreclosure.

474. Gift and Will. The title to real property may also be acquired through gift or by will. A gift is the "voluntary conveyance or transfer of property without consideration of

money or of blood." A gift may be made in expectation of death, and becomes voidable in case of the recovery of the donor. Delivery is essential to the validity of a gift in case the property is subject to actual delivery. As real property cannot be delivered, some act equivalent to delivery is necessary to make the gift valid. A debtor on the verge of insolvency may not give away his property to the prejudice of his creditors. A will is the disposition of one's property to take effect after death. It may be modified by a codicil, which is simply an addition to or qualification of a will. A will disposing of real property must be in writing and must be signed by the testator (the person making the will). He must be competent, as in the case of a contract. In nearly all of the states he must sign the will in the presence of witnesses, and the witnesses must attest to the genuineness of his signature. A will may be revoked at any time by destroying it, by making a new will expressly revoking the old one, or by the testator's marriage and the birth of a child. A will usually provides for the carrying out of its provisions by some person, called an executor (if a man) or an executrix (if a woman).

475. Lease. A lease has already been mentioned as a form of deed. It is a transfer of an estate for years in real property. "This is one of the most important estates known in law." It is a contract between a landlord and tenant implying certain responsibilities as to each other and the property. A lease, in common with all contracts, must be written when it involves a long period of years. Usually the law demands that leases for a longer period than a year shall be written. The tenant is bound to take good care of the property entrusted to him, *i.e.*, he must return it to the landlord

in the same condition in which he received it, allowing, of course, for the ordinary wear and tear. If the property needs to be repaired, the tenant is liable for the ordinary repairs; the landlord for all others. If the tenant violates the contract in any respect, he may be evicted. The landlord cannot, however, take the law into his own hands and proceed to set the tenant's goods into the street. He must first apply to the courts, and they entrust the execution of the process to the sheriff or a similar officer. If the owner of a piece of property sells it during the period of its occupancy by a tenant, the tenant may remain until his lease expires but pays the rent to the new owner. If the tenant prefers, he may quit the property, as the contract was primarily between him and the original owner. If he has sown crops with the knowledge that his lease will expire before the time for harvesting the same, he forfeits their ownership to the landlord. Otherwise, he is entitled to the results of his labor, even if his lease is for an indefinite period and subject to the will of the landlord for its termination. An assignment occurs when the tenant transfers his entire interest in the property to a new tenant. In this case the new tenant pays the rent directly to the landlord. A sublease is given where the tenant lets a part of his interest to another. In this case the rent is paid to the tenant. In case the lease is for an indefinite period, the landlord is required, when he wishes to secure possession of the property, to serve upon the tenant a notice to quit.

476. Appurtenances. When real property is transferred there are various minor rights, called appurtenances, which go with it. When a house is transferred, the new owner acquires the right to the blinds, the keys, the trees on the lot,

and any minerals which may be beneath the soil. Appurtenances may be of other kinds, such as the right of way across another's property, or the right to the use of a stream. They may be acquired either by grant or by long use. They may be forfeited by granting them back to the original possessor or to a new one, or by disuse for a period of twenty years.

477. Personal Property: Sale. The principal contracts by which estates in personal property may be acquired are contracts of sale, contracts of agency, contracts of partnership, and contracts of indorsement. A sale proper is the transfer of personal property for money. It must be carefully distinguished from barter. The latter implies simply an exchange of one thing for another, presumably its equivalent in value. In a true sale, one of the things exchanged must be money. As a sale is a contract relation, it must, of course, satisfy the conditions governing a valid contract. There are some special conditions which must likewise be satisfied. Perhaps the most important of these is that the property must have an "actual or potential existence" to constitute a valid transfer. Delivery, however, is not necessary to make the sale binding. The right of possessing the goods passes to the buyer the moment he tenders the price; and if the goods are sold on credit, the buyer is likewise entitled to their immediate possession. If the buyer fails to secure the goods and leaves them with the seller, he not only runs the risk of losing them in case of their destruction by fire, but he may be defrauded of them by the original possessor's selling them a second time, in which case the original possessor may be sued for damages. Any sale made by a debtor to a third party with the understanding that the

thing sold shall remain in his hands is void. The law provides, however, that if a chattel mortgage be given by the debtor to the third party purchasing, the sale is valid, no matter how many creditors the man may have, or who has possession of the goods. A chattel mortgage is simply a paper given as security for the money tendered, and prevents the debtor from reselling the goods, thus protecting the purchaser.

478. Transfer of Title. The general rule as to the transfer of title or right to the property is that the seller can transfer only those rights which he has in the property. If, then, the property be stolen property, the purchaser obviously acquires no right to the same, as the seller transferred none. An exception is made, however, in the case of negotiable paper which may be stolen before it is due. The reason for this is that such paper is so readily transferred from one person to another that many might suffer if the ordinary rule were applied. When the seller covenants or undertakes to insure that the thing which is sold is his own, he is said to warrant the title. Such action secures the purchaser against loss in case of misrepresentation. Likewise, if he expressly guarantees the quality, the purchaser is also secured against loss. Where the seller does not say anything about the quality, the purchaser buys at his own risk and cannot recover from the seller if the goods do not measure up to a certain standard. In case property be sold on credit, the seller sometimes retains the title to the property until full payment is made.

479. Liens. A lien may be defined as the "right vested in one man to retain possession of the property of another until some charge upon it or some pecuniary claim on account of

it has been satisfied." A lien, then, usually implies the possession of the article, and is lost when the article has passed out of the hands of the creditor. "In trade, however, a lien sometimes continues even after the delivery of property, if it be the general usage and the right of lien be made a part of the contract."

480. Agency. Agency is a "relation between two or more persons by which one party . . . is authorized to do certain acts for . . . the other," called a principal. This relationship is a very common one in the business world. The clerk in the store, the cashier in the bank, the superintendent of a railroad, are all agents acting for principals. In general the principal is liable for acts of the agent. If, however, the agent exceeds his authority, or is acting for himself while pretending to act for his principal, or refuses to disclose his principal, he becomes liable for his acts. An agent often has a lien upon the property of the principal. This can be illustrated by the commission merchant. It is his business to sell goods, usually in bulk, for his principal on a commission. If the commission is not forthcoming, he may exercise his right of lien by holding the goods consigned to him to be sold. The broker differs somewhat from the commission merchant. He never has goods in his possession, but it is his business to bring the buyer and the seller together. He is also paid a commission.

481. Partnership. A contract of partnership is "a contract by which two or more persons unite their property or labor in some lawful business, and agree to divide the profits or bear the loss in certain proportions." By this contract each member of the partnership acquires an interest in the partnership property and becomes at the same time liable

for any engagements or transactions made by any other member of the concern. In all matters pertaining to the partnership the act of one partner binds all. A secret partner becomes liable with the others if his identity is disclosed. There are various ways in which partnerships are dissolved. The most common means are by an act of the parties, by the act of God, and by the act of law. Either party may dissolve it, if it be for an indefinite period. If it be for a term of years, it may only be dissolved by the courts or by the "act of God," as by the death of one of the partners. In case of a dissolution, notice must be served upon all having dealings with the firm, but a newspaper notice suffices for the general public.

482. Negotiable Paper: Forms. A contract of indorsement transfers an interest in negotiable paper. This is any paper that may be sold and passed from hand to hand under certain limitations, as we pass coin or bank bills, *i.e.*, paper which is capable of ready transference from one person to another. Checks, bills of exchange, and promissory notes are forms of negotiable paper. A bill of exchange or a draft is a "request by one person to another to pay a third person a certain sum of money mentioned in the paper." The person executing or signing the draft is the drawer; the person called upon to pay the same, the drawee; and the person who is designated to receive the money is the payee. A check is very similar to a bill of exchange. It is an order upon a bank given by one person in favor of another. The bank then stands in the relation of drawee. A promissory note is a simple promise by one person to pay another a specified sum. There are only two parties to a note, viz., the maker, the one signing the note; and the payee, the one in whose

favor it is made. "No precise words of contract are essential in a promissory note, provided they amount in a legal effect to a promise to pay." (Spalding, Encyclopedia, p. 149.) The usual form is as follows:

$ ———. Place ————, Date ———.

Ninety days after date I promise to pay John Doe, or bearer (*or* order), five hundred dollars, at ———, with interest thereon, at the rate of ———— per cent per annum, from date (*or* maturity) until paid. Value received.

(Signed) D. R.

The law is more strict about the wording of a bill of exchange. The following is the usual form:

$ ———. Place ————, Date ———.

——— days (*or* months) after sight (*or* date) pay to John Doe, or order, ——— dollars, value received (on account of ————, *or*, and charge to the account of).

To B. (at) ————.

(Signed) D. R.

The following is the usual form for a check:

$ ———. Place ————, Date ———.

First National Bank, pay to the order of John Doe,———— dollars.

(Signed) D. R.

483. Use. These forms of negotiable paper make unnecessary the handling of large sums of money and the conse-

quent inconvenience and danger attendant upon its use, and therefore have a wide use in the business world. If A living in New York owes B living in New Orleans a sum of money, and A has money deposited in a bank in New York, he goes to this bank and secures from it an order upon a bank in New Orleans with which the New York bank does business to pay B the amount of the debt. If B happens to have money in this bank, the amount is placed to his credit. In the course of a few months the amount advanced by these banks in similar transactions may balance, and consequently but little actual money may change hands. Again, C may owe A the amount of A's debt to B or more, and by A's drawing an order upon C to pay B, two obligations may be discharged by a single transaction. The check also answers much the same purpose.

484. Indorsement: Kinds. All these forms of paper are transferred and made negotiable by indorsement. This is any writing on the back transferring the rights of the holder to some other person. An indorsement in blank consists in simply writing the name of the indorser on the back of the paper, and this makes it transferable to any one holding it. A full indorsement is where there appears on the back of the paper the name of the person in whose favor it is made. A qualified indorsement is where the liability of the indorser is limited, either by adding the word "cashier," which serves to indicate that he is the agent of some corporation, or the words "without recourse to me."

485. Liabilities of Indorsement. Indorsement implies liability on the part of the indorser. In the case of a promissory note the maker is, of course, the principal debtor. If the payee indorses it and sells it to another, he, too, becomes

liable to the purchaser for the amount of the note in case it is not paid when due. Every indorser as well as the maker then may be sued for the payment of the note. When a bill of exchange is presented to the drawee, he is not morally or legally bound to honor the same. If, however, he promises to pay the amount to the payee or holder when it becomes due, he is said to accept it. This operation makes him a party to the contract and transfers the burden of the obligation from the maker to the drawee. If he refuses to accept the bill, then the holder looks to the maker and indorsers for the amount involved. A notice is usually served in this event on the drawee and indorsers. When negotiable paper is transferred after maturity, the new possessors acquire no further rights or incur no obligations but those inherent in the bill when it became due. The purchaser then takes the note at his peril. If no time payment is specified in the paper, it is payable immediately. Forged paper acquires no value by transference, and may, therefore, cause loss to many. A note or bill does not begin to draw interest until maturity, unless otherwise specified therein.

486. Transfer of Personal Property by Gift and Will. The law of gift and will has already been considered in connection with real property. Much that was said in that connection applies as well to personal property. As personal property is movable property, actual delivery is necessary to constitute a valid gift. The other conditions as to revocation and the rights of creditors are the same as in similar transfers of real property. The requisites for a will of personal property differ so much in the different states that it is impossible to state them here. The law usually requires such a will to be in writing except in cases of great necessity,

"as of a soldier in actual military service, or of a sailor while at sea." Property disposed of in this way is known as a legacy. A legacy is always conditioned on the debts which the testator may have incurred during his lifetime and which still remain unsettled. Such a will may be revoked by destruction or express revocation. When a person dies without leaving a will, he is said to die intestate. The property is then entrusted by the courts to a person called an administrator, who must distribute the property according to law. Each state prescribes carefully who shall inherit property.

487. Personal Security: Libel and Slander. Only a few of the laws guaranteeing the security of the individual need be considered here. The law guarantees the personal security of all as to reputation by laws against slander and libel. These offences are similar in character in that they consist of false statements that will injure the character of another. A libel, however, must be written or printed; a slander is simply an oral statement. The punishment of libel is much more severe, and it is even accounted a crime against society because of its wide circulation as compared with slander. The punishment for slander is usually a fine varying with the offence; the punishment of libel may include both fine and imprisonment.

488. Relations of Parent and Child. The laws thrown about the relations of parent and child and of husband and wife form one of the greatest bulwarks of our institutions. The law recognizes in both relations mutual rights and duties. The parent among other things is entitled to the custody of the child, and if the child be working he is also entitled to his wages. He may punish the child, but not with excessive cruelty. The child, on the other hand, is entitled

to support. If the parent denies this, the child may secure it by contracting with some other person for it. If, however, the father die and the mother be left with the support of minor children, the law generally does not demand that she support them. The father is obliged to support his minor children even if they possess property of their own. Children who are able are obliged to support indigent parents.

489. Relations of Husband and Wife. The most important relations between husband and wife are in general those arising under the marriage contract. The same general rules which were mentioned above as applying to all contracts apply to the marriage contract. The age at which the law allows persons to enter into the marriage relation is called the age of consent. This is usually twenty-one for man and eighteen for woman. The law does not recognize a marriage of near relatives. The ceremony required to constitute a valid marriage must be of a nature to show that the assent of the parties is mutual and that they are aware of the terms of the agreement which they are making. Marriages are sometimes contracted in New York state by drawing up a formal contract in the presence of the proper authorities and signing the same in the presence of witnesses. The wife is entitled on marriage under the common law to the dower right, *i.e.*, the right to the use of one-third of any real estate her husband may have had at the time of the marriage or that he may acquire during his lifetime. The husband, however, acquires no right by marriage to the property of his wife, excepting in case she dies intestate after children are born to the family. The common law long recognized the dependence of the wife, and would not permit her to enter into any contract relation after marriage. This, of course,

placed her property at the disposal of her husband. The statute law has changed this, and she may sell and transfer her separate property as though she were single. The wife is entitled to support under the marriage contract, and may compel her husband to support her even if they have separated, providing the separation is through some fault of his. If the wife be responsible for the separation, or if a court has granted them a divorce, then his responsibility for her support is terminated.

490. Crimes: Punishment. There remain for consideration those offences which not only threaten the rights of an individual but in a larger sense are wrongs against society. Violations of any of the laws already considered are largely matters of individual injustice. Crimes are public wrongs, and as such must be considered apart. The state makes a careful distinction, and punishes these public wrongs with greater severity than those in which individuals only are involved. In the latter case, a money penalty in the shape of a fine or a short imprisonment is sufficient to satisfy the injury. In the former the state inflicts a penalty with two objects in view, viz., "to reform the offender and deter him and others from committing like offences, and to protect society." The punishment varies from a simple fine to imprisonment and death. Capital punishment, however, has lost favor in recent years with the progress of humane ideas throughout the civilized world.

491. Crimes against Person. It is possible to note only some of the more important offences against society. Treason, the principal offence against the sovereignty of the state, has already been defined in another connection. Of the offences against the lives and persons of individuals, the most

important are murder, manslaughter, and robbery. Homicide is the general name applied to the taking of human life by human agency. If the killing be premeditated, or committed in connection with the commission of a crime, it constitutes murder; if the killing be without malice or intention, it is manslaughter. Robbery is taking from another with criminal intent his property by violence or by putting him in fear of injury.

492. Crimes against Property. The common crimes against private property are arson, burglary, larceny, and embezzlement. Arson is "maliciously burning another's house . . . or other property."[1] Arson in the first degree is burning an inhabited dwelling at night. Burglary is "breaking and entering the house of another . . . with intent to commit a felony."[2] Larceny is criminally taking away the property of another without his consent and with the intent to convert it to the offender's own use. It differs, then, from robbery in that violence does not enter into the act. Grand larceny is where the amount taken is large; petit larceny, where it is of small value. Embezzlement (classed as larceny in some states) may be confused with larceny. It consists primarily in employing or removing as one's own what may have been entrusted to one. Forgery is an offence against public and private securities, and consists in wilfully making or altering any writing with intent to defraud.

493. Crimes against Public Morals. Bigamy and polygamy are offences against public morals. The first consists in contracting a second marriage when another already exists; the latter in having plural wives or husbands.

[1] See Spaulding Encyclopedia. [2] Ibid.

494. Criminal Intent: Accessories. The intent to commit a crime is punishable no less than is its actual commission, although the punishment is often not so severe in case of a failure to commit the act. A person planning a crime, as well as the actual perpetrator, is also liable to punishment. The law recognizes two classes of accessories, those before the fact and those after the fact. The latter consist of persons who assist the criminal to escape, or who willingly render him any assistance to thwart the ends of justice after the act has been committed. The power to arrest a person committing a crime is vested in any one who may see the act. If a person be only suspected of committing a crime, he can only be arrested on a warrant sworn to before a court and executed by an officer of the court.

495. Criminal and Civil Suits: Procedure Compared. The procedure in criminal and civil suits is similar in some respects. There are, however, marked differences, as will be noted in a careful examination of the steps in each. The parties involved are termed the plaintiff and the defendant. In a criminal case the person accused is the defendant, and the people of the state are the plaintiffs or parties bringing the action. In like manner, in a civil case the party bringing the suit is termed the plaintiff and the other the defendant.

496. Civil Suit. The first step in a civil case is usually a summons served by the plaintiff or his lawyer requiring the defendant to appear in person or through his lawyer at a given place, usually a court, to answer the complaint in an action. The summons may be accompanied by the complaint. If they are separate documents, then the complaint or charge is served on the appearance of the defendant or

his lawyer. If the latter fails to appear, then the court enters judgment against the defendant. If he appears, he files his answer or demurrer. If these papers, called the pleadings, agree, then the plaintiff takes judgment, as there is no need of a trial. A trial is for the purpose of ascertaining the facts in the case and applying the law to the facts as determined by the evidence. At the desire of either party involved, the law allows the case to be tried before a jury. In some cases the hearing is before a judge alone. In jury cases, after a jury has been impanelled, the plaintiff or his lawyer opens the case and examines witnesses to prove his assertions, each of whom is subject to a cross-examination by the other side to bring out any facts likely to be prejudicial to the plaintiff or favorable to the defendant. The defendant's side is then presented, his witnesses are examined, and then cross-examined by the opposing counsel. The case is then summed up, usually by the defendant followed by the plaintiff. The judge then instructs the jury as to the law involved, and the jury retire to deliberate on the case. When they return they render through their chairman (one of their number chosen by them) a decision called a verdict. The defeated party usually pays the costs of bringing the action and drops the case, or takes an appeal to a higher court.

497. Criminal Suit. The national and state constitutions contain clauses requiring the grand jury to find an indictment before a person can be tried for an infamous or capital crime. This step may or may not be preceded by the arrest of the criminal. The law regards every man as innocent until he is proved guilty, and treats him accordingly throughout the trial. After a "true bill" indicting him has been

found, a time is appointed for his trial, and he secures or is furnished counsel for his defence. He may secure the attendance of witnesses by a subpoena, which is a writ compelling the attendance of persons having a knowledge of the crime. Before the trial the criminal is arraigned and allowed to plead guilty or not guilty. If he pleads guilty, the court proceeds to fix the sentence. The state of New York does not permit a man to plead guilty to an offence punishable by death. If he pleads not guilty, the state arranges for a trial, which is conducted in much the same way as in a civil suit. It is the business of the jury to determine the guilt or innocence of the accused on the basis of the evidence, and the judge fixes the sentence.

Library References. — Macy, Chaps. XV–XVI, XX; Macy, *First Lessons*, Chap. XV; Townsend, *Commercial Law*, Chaps. I–IV, VII, XI–XII, XIX–XX; Bigelow, *Bills and Notes*, Chaps. II–VI, X–XVI; Dole, Chaps. XV, XXXVIII; Wharton; Spalding, Encyclopedia; Clark.

QUESTIONS ON THE TEXT

347. Define law, common law, statute law.

348. Distinguish between constitution and a statute law.

349. Define personal property.

350. Define real estate, fee simple, estate in fee. Define a guardian.

351. What is a life estate in real property?

352. What is a contract? Mention three things essential to the validity of a contract. Give an example of a contract that is not binding.

353. What is the fundamental rule of law with regard to contracts?

354. Mention three exceptions to this rule.

355. Mention two classes of persons who cannot be compelled to fulfill a contract.

356. Define the following classes of contracts: (1) oral; (2) written; (3) express; (4) implied.

357. What is the consideration of a contract? Is it necessary to the validity of a contract?

358. What persons are infants in the eyes of the law? In what respect are their powers limited?

359. Describe the process of transferring the title to real estate in this state.

360. Define the statute of limitations, deed, warranty deed, dower.

361. Explain the meaning of the term "adverse possession" as applied to real estate.

362. In purchasing real estate what investigations as to title should be made, and what formalities observed? Give reasons.

363. Explain the purpose of each of the following steps in the sale of real estate: signature of conveyor's wife; acknowledgment of signature; delivery of deed to purchaser; recording of deed.

364. What is meant by recording a deed of real estate? Give two reasons why it is important that deeds be recorded.

365. Where is the record of deeds and mortgages of real estate kept?

366. What is a mortgage? What precaution should be taken by the mortgagee to make his claim secure in case of (1) a mortgage on land; (2) a chattel mortgage?

367. Mention three things essential to the validity of a real estate mortgage, and explain how the holder of such a mortgage may enforce his claim in default of payment.

368. Who may make a will? Define codicil.

369. What is a will? What formalities as to signature and witnesses are necessary to give validity to a will? Mention two ways in which a will may be revoked.

370. Define lease. What effect has the sale of leased property on the rights or liabilities of the tenant? When may a landlord evict his tenant and how must he proceed?

371. Define right of way.

372. In what manner is personal property transferred? Define lien.

373. Explain what is meant by filing a chattel mortgage. Why are such steps necessary?

374. Define partnership, agency.

375. State the fundamental rule which determines how far a principal is bound by the acts of his agent.

376. What is commercial paper? Negotiable paper?

377. How may the holder of a note payable to his order transfer it and avoid liability for its payment?

378. What are indorsements? Mention three kinds of indorsements.

379. In case an indorsed note is not paid at maturity, what step is necessary to make the indorser liable?

380. Explain the importance of the words "for value received" in a promissory note.

381. State the differences between an administrator and an executor.

382. Define letters testamentary.

383. If no will be made, how is the property of a man divided among his widow and children?

384. Define slander, libel; distinguish between them.

385. State briefly the legal rights and obligations existing between parent and child.

386. Define crime. What is the object of punishing crime?

387. Is lynch-law ever justifiable? Give a reason for your answer.

388. What is a felony? Define arson.

389. Define burglary, robbery.

390. Define perjury; forgery; usury.

391. Distinguish between (1) murder and manslaughter; (2) larceny and robbery. How is each punishable?

392. *Resolved:* That capital punishment be abolished. Debate this question.

393. *Resolved:* That the fines system tends to unequalize justice, and should, therefore, be abandoned.

394. A person is arrested, charged with larceny; mention two rights possessed by the prisoner and give the successive steps that will result in his conviction or acquittal.

395. What is a warrant; a subpœna?

396. Define bail. Mention an offence that is not bailable.

397. What is meant by indictment; conviction; acquittal?

398. Give the smallest and the largest number of which a grand jury may be composed. What are the duties of a grand jury?

399. Tell how a grand jury is drawn.

400. Distinguish between a grand and a petit jury as to (1) number of members; (2) duties; (3) mode of conducting business.

401. Describe the proceedings in an ordinary civil case.

402. Describe the different steps in the process of collecting a debt by a suit at law.

403. A claims that B owes him $500 and refuses to pay it; describe the legal procedure necessary to collect the debt.

404. Define summons. By the service of what papers is a suit at law begun?

405. What is a plaintiff? What is a defendant?

406. What is an oath? Define affirmation.

APPENDIX

ARTICLES OF CONFEDERATION

Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE I. — The style of this Confederacy shall be, "The United States of America."

ARTICLE II. — Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled.

ARTICLE III. — The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ARTICLE IV. — The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively; provided that such restrictions shall not

extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction shall be laid by any State on the property of the United States or either of them. If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State shall flee from justice and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense. Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ARTICLE V. — For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the Legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year. No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States for which he, or another for his benefit, receives any salary, fees, or emoluments of any kind. Each State shall maintain its own delegates in any meeting of the States and while they act as members of the Committee of the States. In determining questions in the United States, in Congress assembled, each State shall have one vote. Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrest and imprisonment during the time of their going to and from, and attendance on, Congress, except for treason, felony, or breach of the peace.

ARTICLE VI. — No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defense of such State or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use in public stores a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipages.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a

delay, till the United States, in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled shall determine otherwise.

ARTICLE VII. — When land forces are raised by any State for the common defense, all officers of or under the rank of Colonel shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ARTICLE VIII. — All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

ARTICLE IX. — The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the VIth article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on

foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatever; of establishing rules for deciding, in all cases, what captures on land and water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States, in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge

sufficient, or, being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned; provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands, and the States which passed such grants, are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating

post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in Congress assembled, shall have authority to appoint a committee to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall

be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal except such parts as are above excepted, to lay before the Legislatures of the several States.

ARTICLE X. — The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress

assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ARTICLE XI. — Canada, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ARTICLE XII. — All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress before the assembling of the United States in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ARTICLE XIII. — Every State shall abide by the determinations of the United States in Congress assembled on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislature of every State.

And whereas it hath pleased the great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, and they shall abide by the determinations of the United States in Congress assembled on all

questions which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

CONSTITUTION OF THE UNITED STATES

Preamble

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.—LEGISLATIVE DEPARTMENT

Section 1.—Congress

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.[1]

Section 2.—House of Representatives

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

Election of Members.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Qualifications.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union,

[1] The term of each Congress is two years. It assembles on the first Monday in December and "expires at noon of the fourth of March next succeeding the beginning of its second regular session, when a new Congress begins."

according to their respective numbers,[1] which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.[2] The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative: and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

Apportionment.

When vacancies happen in the representation from any State, the executive authority[3] thereof shall issue writs of election to fill such vacancies.

Vacancies.

The House of Representatives shall choose their Speaker[4] and other officers; and shall have the sole power of impeachment.

Officers. Impeachment.

Section 3. — Senate

The Senate of the United States shall be composed of two senators from each State, chosen by the Legislature thereof, for six years; and each senator shall have one vote.

Number of Senators: Election.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; of the third class, at

[1] The apportionment under the census of 1900 is one representative for every 193,291 persons.

[2] The word "persons" refers to slaves. This paragraph has been amended (Amendments XIII and XIV) and is no longer in force.

[3] Governor.

[4] The Speaker is one of the representatives; the other officers — clerk, sergeant-at-arms, postmaster, doorkeeper, etc., — are not.

the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the executive[1] thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

Classification.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

Qualifications.

The Vice-President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

President of Senate.

The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

Officers.

The Senate shall have the sole power to try all impeachments: When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief-Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Trials of Impeachment.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Judgment in Case of Conviction.

Section 4. — Both Houses

The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.[2]

Manner of electing Members.

[1] Governor.

[2] This is to prevent Congress from fixing the places of meeting of the state legislatures.

Meetings of Congress.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. — The Houses separately

Organization.

Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Rules.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Journal.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Adjournment.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6. — Privileges and Disabilities of Members

Pay and Privileges of Members.

The senators and representatives shall receive a compensation[1] for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

[1] Five thousand dollars a year and twenty cents for every mile of travel each way from their homes at each annual session. There is also an allowance of one hundred and twenty-five dollars for stationery and newspapers.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Prohibitions on Members.

Section 7. — Method of passing Laws

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Revenue Bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

How Bills become Laws.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Resolutions, etc.

Section 8. — Powers granted to Congress

The Congress shall have power:

Powers of Congress.

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal,[1] and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively

[1] Letters granted by the government to private citizens in time of war, authorizing them, under certain conditions, to capture the ships of the enemy.

the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States,[1] and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; — And

Implied Powers.

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. — Powers forbidden to the United States

Absolute Prohibitions on Congress.

The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.[2]

The privilege of the writ of habeas corpus[3] shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder[4] or ex-post-facto law[5] shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

[1] The District of Columbia.

[2] This refers to the foreign slave trade. "Persons" means "slaves." In 1808 Congress prohibited the importation of slaves. This clause is, of course, no longer in force.

[3] An official document requiring an accused person who is in prison awaiting trial to be brought into court to inquire whether he may be legally held.

[4] A special legislative act by which a person may be condemned to death or to outlawry or banishment without the opportunity of defending himself which he would have in a court of law.

[5] A law relating to the punishment of acts committed before the law was passed.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. — Powers forbidden to the States

Absolute Prohibitions on the States.

No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex-post-facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Conditional Prohibitions on the States.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships-of-war, in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II. — EXECUTIVE DEPARTMENT

Section 1. — President and Vice-President

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Term.

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Electors.

[[1] The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the

Proceedings of Electors and of Congress.

[1] This paragraph in brackets has been superseded by the Twelfth Amendment.

choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

Time of choosing Electors.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.[1]

Qualifications of President.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years resident within the United States.

Vacancy.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President; and such officer shall act accordingly until the disability be removed, or a President shall be elected.

Salary.

The President shall, at stated times, receive for his services a compensation[2] which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Oath.

Before he enter on the execution of his office, he shall take the following oath or affirmation: — "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

[1] The electors are chosen on the Tuesday next after the first Monday in November, preceding the expiration of a presidential term. They vote (by Act of Congress of Feb. 3, 1887) on the second Monday in January following for President and Vice-President. The votes are counted, and declared in Congress on the second Wednesday of the following February.

[2] The President now receives fifty thousand dollars a year; the Vice-President, eight thousand dollars.

Section 2. — Powers of the President

The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Military Powers.

Reprieves and Pardons.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

Treaties.

Appointments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Fill Vacancies.

Section 3. — Duties of the President

He shall from time to time give to the Congress information[1] of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement

Message.

[1] The President gives this information by sending a message to Congress at the opening of each session. Washington and John Adams read their messages in person to Congress. Jefferson, however, sent a written message to Congress by his private secretary, and this custom has since been followed.

between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Convene Congress.

Section 4. — Impeachment

The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Removal of Officers.

Article III. — Judicial Department

Section 1. — United States Courts

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation[1] which shall not be diminished during their continuance in office.

Courts established.

Judges.

Section 2. — Jurisdiction of United States Courts

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; — to all cases affecting ambassadors, other public ministers, and consuls; — to all cases of admiralty and maritime jurisdiction; — to controversies to which the United States shall be a party; — to controversies between two or more States; — between a State and citizens of another State;[2] — between citizens of different

Federal Courts in General.

[1] The chief justice of the Supreme Court receives ten thousand five hundred dollars a year; the associate justices, ten thousand dollars.

[2] But compare the Eleventh Amendment.

States; — between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

Supreme Court.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Trials.

Section 3. — Treason

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

Treason defined.

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

Punishment.

ARTICLE IV. — RELATIONS OF THE STATES TO EACH OTHER

Section 1. — Official Acts

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. — Privileges of Citizens

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Fugitives from Justice.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Fugitive Slaves.

No person[1] held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. — New States and Territories

Admission of States.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

Territory and Property of United States.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Section 4. — Protection of the States

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

1 "Person" here includes slave. This was the basis of the Fugitive Slave Law. It is now superseded by the Thirteenth Amendment.

ARTICLE V. — AMENDMENTS

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

How proposed.

How ratified.

ARTICLE VI. — GENERAL PROVISIONS

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

Public Debt.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Supremacy of Constitution.

The senators and representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Official Oath.

Religious Test.

ARTICLE VII. — RATIFICATION OF THE CONSTITUTION

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth.

In witness whereof, we have hereunto subscribed our names.[1]

GEORGE WASHINGTON,
President, and Deputy from Virginia.

NEW HAMPSHIRE

John Langdon
Nicholas Gilman

MASSACHUSETTS

Nathaniel Gorham
Rufus King

CONNECTICUT

William Samuel Johnson
Roger Sherman

NEW YORK

Alexander Hamilton

NEW JERSEY

William Livingston
David Brearley
William Paterson
Jonathan Dayton

PENNSYLVANIA

Benjamin Franklin
Thomas Mifflin
Robert Morris
George Clymer
Thomas Fitzsimons
Jared Ingersoll
James Wilson
Gouverneur Morris

DELAWARE

George Read
Gunning Bedford, Jr.
John Dickinson
Richard Bassett
Jacob Broom

MARYLAND

James M'Henry
Daniel of St. Thomas Jenifer
Daniel Carroll

VIRGINIA

John Blair
James Madison, Jr.

NORTH CAROLINA

William Blount
Richard Dobbs Spaight
Hugh Williamson

SOUTH CAROLINA

John Rutledge
Charles C. Pinckney
Charles Pinckney
Pierce Butler

GEORGIA

William Few
Abraham Baldwin

Attest: WILLIAM JACKSON, *Secretary.*

[1] There were sixty-five delegates chosen to the convention: ten did not attend; sixteen declined or failed to sign; thirty-nine signed. Rhode Island sent no delegates.

AMENDMENTS

Religion, Speech, Press, Assembly, Petition.

ARTICLE I.[1] — Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievances.

Militia.

ARTICLE II. — A well-regulated militia being necessary to the security of a free State the right of the people to keep and bear arms shall not be infringed.

Soldiers.

ARTICLE III. — No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war but in a manner to be prescribed by law.

Unreasonable Searches.

ARTICLE IV. — The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Criminal Prosecutions.

ARTICLE V. — No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war and public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor to be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI. — In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury

[1] These amendments were proposed by Congress and ratified by the Legislatures of the several States, pursuant to the fifth article of the Constitution. The first ten were offered in 1789 and adopted before the close of 1791. They were for the most part the work of Madison. They are frequently called the Bill of Rights, as their purpose is to guard more efficiently the rights of the people and of the states.

of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Suits at Common Law.

ARTICLE VII. — In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States than according to the rules of common law.

Bail, Punishments.

ARTICLE VIII. — Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Reserved Rights and Powers.

ARTICLE IX. — The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X. — The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Judicial Power granted.

ARTICLE XI.[1] — The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against any of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ARTICLE XII.[2] — The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate; —

[1] Proposed in 1794; adopted in 1798.
[2] Adopted in 1804.

the president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; — the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Method of electing President and Vice-President.

ARTICLE XIII.[1] — *Section 1.* Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Slavery abolished.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.[2] — *Section 1.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

[1] Adopted in 1865.
[2] Adopted in 1868.

citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Negroes made Citizens.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive or judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a senator or representative in Congress, or elector of President or Vice-President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5. Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.[1] — *Section 1.* The rights of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

Negroes made Voters.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

[1] Adopted in 1870.

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